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Programme budget for the biennium 2018–2019

Human resources management

United Nations common system

Administrative and budgetary aspects of the financing of the United Nations peacekeeping operations

Administrative and financial implications of the decisions and recommendations contained in the report of the International Civil Service Commission for the year 2018

Report of the Advisory Committee on Administrative and Budgetary Questions

I. Introduction

1. The Advisory Committee on Administrative and Budgetary Questions has considered the statement submitted by the Secretary-General (A/C.5/73/2) in accordance with rule 153 of the rules of procedure of the General Assembly on the administrative and financial implications of the decisions and recommendations contained in the report of the International Civil Service Commission for 2018. The Committee also had before it an advance version of the report of the Commission for the year 2018 (A/73/30). During its consideration of the statement, the Committee met representatives of the Secretary-General and the Commission, who provided additional information and clarification, concluding with written responses received on 3 October 2018.

2. The decisions and recommendations of the Commission relate to five issues: changes in pensionable remuneration for both categories of staff; the end-of-service grant; remuneration of the Professional and higher categories of staff; children's and secondary dependant's allowances; and conditions of service in the field (hardship locations classified in the D and E categories) (A/C.5/73/2, para. 1).

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II. Pensionable remuneration for both categories of staff

3. It is indicated in the statement that, in July 2017, the Commission set up a working group on pensionable remuneration for the Professional and General Service categories, which presented its findings and recommendations at the eighty-sixth session of the Commission. The Commission reviewed the results of a comparability study of the pension schemes of the United Nations and the federal civil service of the United States of America that had been completed by the secretariats of the Commission and the United Nations Joint Staff Pension Fund. On the basis of those elements, the Commission decided to recommend to the General Assembly that: pensionable remuneration for all categories be based on single rates of the common scale of staff assessment, necessitating a revision to the scale; the scale of pensionable remuneration and pay protection points for staff in the Professional and higher categories be revised; and the pensionable remuneration for ungraded officials be calculated with reference to the top step of the D-2 level, and the adjustment factor revised.

4. According to the Secretariat's estimate, the recommendations would entail for the United Nations an estimated increase of $4,254,100 for the programme budget of the United Nations for the remainder of the biennium 2018–2019, as well as for the upcoming proposed programme budget for the year 2020. With regard to peacekeeping operations, the increases are estimated at $1.564 million for the financial period 2018/19 and $3.128 million for the financial period 2019/20 (ibid., para. 5).

5. Upon enquiry, the Advisory Committee was informed that the proposed changes to the scale of pensionable remuneration would increase the Pension Fund's required contribution rate by 0.12 per cent of pensionable remuneration. According to the contact group of the United Nations Joint Staff Pension Board, such an increase would have a very limited effect on the long-term funding of the Fund.

III. End-of-service grant

6. In its resolution 71/264, the General Assembly requested the Commission to undertake a comprehensive analysis of the effect of its recommendation that an end-of-service grant be adopted for fixed-term staff separating from the Organization upon the expiration of their appointment after 10 or more years of continuous service. Following the completion of that analysis, the Commission decided to recommend the introduction of an end-of-service grant, to be paid as a lump sum to staff members who separate from the organizations upon the expiration of their fixed-term appointment after five or more years of continuous service.

7. According to the Secretariat's estimate, the introduction of the grant would entail for the United Nations an estimated increase of $2,242,900 for the programme budget of the United Nations for the remainder of the biennium 2018–2019, as well as for the upcoming proposed programme budget for the year 2020. The increases for peacekeeping operations are estimated at $809,900 for the financial period 2018/19 and $1,619,800 for the financial period 2019/20 (ibid., para. 9).

8. The Advisory Committee was informed, upon enquiry, that staff members who received a termination indemnity or a retirement benefit or were reinstated in a 12-month period after separation would not be eligible for the grant.

IV. Conditions of service of the Professional and higher categories

A. Base/floor salary scale

9. It is indicated in the statement that the Commission recommends an increase in the base/floor salary of 1.83 per cent as from 1 January 2019, to be implemented through the standard no-loss-no-gain procedure (i.e., by increasing the base/floor salary scale and commensurately decreasing post adjustment multipliers). According to the Secretariat's estimate, the financial implications of the recommendation are as follows: for the programme budget of the United Nations, an increase of $84,900 for the remainder of the biennium 2018–2019, as well as for the upcoming proposed programme budget for the year 2020; and, for peacekeeping operations, an increase of $31,200 for the financial period 2018/19 and $62,400 for the financial period 2019/20 (ibid., para. 11).

10. The Advisory Committee was informed, upon enquiry, that the only direct financial implication arising from the measure would be an increase in the termination indemnity, which is linked to the salary scale.

B. Children's and secondary dependant's allowances

11. It is indicated in the statement that, in 2017, the Commission reviewed the methodology for the children's and secondary dependant's allowances. On the basis of that review, it recommends that, as from 1 January 2019: the children's allowance be set at $3,666 per annum, the allowance for children with disabilities at $7,332 per annum and the secondary dependant's allowance at $1,283 per annum; the allowances be converted to local currency using the official United Nations exchange rate as at the date of implementation; and the allowances be reduced by the amount of any direct payment received by staff from a Government in respect of dependants.

12. According to the Secretariat's estimate, the financial implications of the proposed changes are as follows: for the programme budget of the United Nations, an increase of $2,851,400 for the remainder of the biennium 2018–2019, as well as for the upcoming proposed programme budget for the year 2020; and, for peacekeeping operations, an increase of $947,700 for the financial period 2018/19 and $1,895,400 for the financial period 2019/20 (ibid., para. 14).

V. Field duty stations with extreme hardship conditions

13. It is indicated in the statement that the field-based organizations in the Human Resources Network of the United Nations System Chief Executives Board for Coordination raised the matter of those duty stations with a hardship classification of D or E that were not designated as non-family. The Network pointed out the particular responsibility of United Nations organizations as employers with regard to the duty of care towards staff and their families. The Commission established a dedicated working group and, following receipt of its report, decided to recommend that: staff members decide whether to install eligible dependants in duty stations classified in hardship category D or E that are not designated as non-family duty stations; a reduced non-family service allowance of $15,000 per annum be paid to staff members with eligible dependants who decide to install those dependants elsewhere; and this allowance be reviewed following the full implementation of the revised hardship methodology at the completion of the cycle that ends in 2019.

14. According to the Secretariat's estimate, the financial implications of introducing the reduced non-family service allowance are as follows: for the programme budget of the United Nations, an increase of $291,900 for the remainder of the biennium 2018–2019, as well as for the upcoming proposed programme budget for the year 2020; and, for peacekeeping operations, an increase of $196,000 for the financial period 2018/19 and $392,000 for the financial period 2019/20 (ibid., para. 18).

VI. Conclusions and recommendations

15. The Secretary-General indicates that the decisions and recommendations of the Commission would have financial implications for the programme budgets of the United Nations for the biennium 2018–2019 and for the year 2020 estimated at $9,725,200 for each of those two periods. In addition, the related additional resource requirements for peacekeeping operations are estimated at $3,548,800 for the financial period from 1 July 2018 to 30 June 2019 and $7,097,600 for the financial period from 1 July 2019 to 30 June 2020 (ibid., para. 19).

16. Upon request, the Advisory Committee was provided with a table showing the breakdown of the overall financial implications of implementing the decisions and recommendations, as estimated by the Commission and the Secretariat (see annex).

17. **The Advisory Committee notes significant differences between the total annual cost implications for the Secretariat estimated for the year 2020 by the Secretariat ($16.82 million) and the estimates by the Commission ($27.28 million). The Committee trusts that more detailed explanations for the reasons for these differences will be provided to the General Assembly at the time of its consideration of the present report.**

18. **The Advisory Committee recommends that the General Assembly take note of paragraph 20 of the statement by the Secretary-General, i.e. that, should it approve the recommendations of the Commission:**

(a) **The requirements for the biennium 2018–2019 for the Secretariat would be addressed, as necessary, in the context of the first and second performance reports for the biennium 2018–2019, as appropriate, and the requirements for the year 2020 would be taken into account in the context of that upcoming proposed programme budget;**

(b) **The requirements for the budgets for peacekeeping operations would be addressed, as necessary, in the context of the performance reports for the period from 1 July 2018 to 30 June 2019 and in the context of the upcoming proposed budgets for the financial period from 1 July 2019 to 30 June 2020.**

Annex

Summary of financial implications

	International Civil Service Commission estimate		*Secretariat estimate*							
			Regular budget				*Peacekeeping operations*			
	Number of Professional staff	*Cost per year (United States dollars)*	*Number of staff*	*Percentage*	*2018–2019 estimate (United States dollars)*	*2020 estimate (United States dollars)*	*Number of staff*	*Percentage*	*2018/19 estimate (six months) (United States dollars)*	*2019/20 estimate (one year) (United States dollars)*
Pensionable remuneration: Professional										
Common system	32 500	38.4 million								
Secretariat	10 590	12.5 million	3 601	0.34	4 254 100	4 254 100	2 648	0.25	1 564 000	3 128 000
End-of-service grant: Professional and General Service (fixed-term)	*Number of eligible staff on fixed-term contract*		*Number of eligible staff on fixed-term contract*				*Number of eligible staff on fixed-term contract*			
Common system	937	10.9 million								
Secretariat	659	6.2 million	237	0.36	2 242 900	2 242 900	171	0.26	809 900	1 619 800
Base/floor salary scale: separation payments	*Number of separation cases of Professional staff*		*Number of separation cases of Professional staff*				*Number of separation cases of Professional staff*			
Separation payments: Professional staff										
Common system	2 400	802 000								
Secretariat	747	249 600	254	0.34	84 900	84 900	187	0.25	31 200	62 400
Children's and secondary dependant's allowances[a]	*Number of cases of Professional staff*		*Number of cases of Professional staff*				*Number of cases of Professional staff*			
Children's allowances:										
Common system	36 144	26.6 million								
Secretariat	10 102	7.4 million	3 435	0.34	2 819 800	2 819 800	2 526	0.25	936 600	1 873 200

	International Civil Service Commission estimate		*Secretariat estimate*							
			Regular budget				*Peacekeeping operations*			
	Number of Professional staff	*Cost per year (United States dollars)*	*Number of staff*	*Percentage*	*2018–2019 estimate (United States dollars)*	*2020 estimate (United States dollars)*	*Number of staff*	*Percentage*	*2018/19 estimate (six months) (United States dollars)*	*2019/20 estimate (one year) (United States dollars)*
Transitional allowance (resulting from children's allowance)										
Common system	75	11 300								
Secretariat	10	1 000	10	0.34	1 000	1 000	–	–	–	
Secondary dependant's allowance:										
Common system	950	245 100								
Secretariat	330	85 100	112	0.34	30 600	30 600	83	0.25	11 100	22 200
Total, children's and secondary dependant's allowances										
Common system	**26.8 million**									
Secretariat	**7.5 million**				**2 851 400**	**2 851 400**	**–**		**947 700**	**1 895 400**
Non-family service allowance, D and E locations	*Number of cases of Professional staff*		*Number of cases of Professional staff*				*Number of cases of Professional staff*			
Professional staff										
Common system[b]	434	6.5 million								
Secretariat[c]	181	834 100	64	0.35	291 900	291 900	85	0.47	196 000	392 000
Total										
Common system	**83.4 million**									
Secretariat	**27.28 million**				**9 725 200**	**9 725 200**			**3 548 800**	**7 097 600**

(Footnotes on following page)

(Footnotes to Annex)

Note: Excludes extrabudgetary funding.

[a] Based on United Nations System Chief Executives Board for Coordination staffing data for 2016. Estimates include three different situations or cases: (a) children covered by the children's allowance; (b) children of single parents; and (c) children of working couples who previously received the dependency rate of pay because of their first child but who are now eligible to receive a children's allowance in accordance with the transitional arrangement.

[b] The estimate for the common system is based on the assumption that 434 staff with dependants, serving in category D and E duty stations, would choose not to install their dependants in those locations and therefore would receive the non-family service allowance of $15,000 approved by the Commission.

[c] For the Secretariat, the estimate reflects the difference between the currently budgeted installation entitlements and the impact of adding the option to claim $15,000 in lieu of the installation package for eligible staff members based on the actual statistics (Umoja data as at 1 January 2018) related to the number of Secretariat staff members (181) and their dependants currently installed or not installed in category D and E duty stations without family restrictions.

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Agenda item 74 (b)
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Situation of human rights in the Palestinian territories occupied since 1967*

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, submitted in accordance with Human Rights Council resolution 5/1.

* The present report was submitted after the deadline in order to reflect the most recent developments.

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Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967

Summary

The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, hereby submits his third report to the General Assembly. The report is based primarily on information provided by victims, witnesses, civil society representatives, United Nations representatives and Palestinian officials in Amman, in connection with the mission of the Special Rapporteur to the region in June 2018. The report addresses a number of concerns pertaining to the situation of human rights in the West Bank, including East Jerusalem, and in Gaza.

I. Introduction

1. The present report provides a brief overview of the most pressing human rights concerns in the Occupied Palestinian Territory at the time of submission, as identified by the Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 in conversations and meetings with civil society. The report then presents a detailed analysis of the question of annexation, examining the relevant legal frameworks as well as the situation in the Occupied Palestinian Territory, in particular the West Bank, including East Jerusalem.

2. The Special Rapporteur would like once again to highlight that, despite his requests, he has not yet been granted access to the Occupied Palestinian Territory by Israel. He most recently requested access to the Occupied Palestinian Territory on 24 April 2018. At the writing of the present report, no reply had been received from the Government of Israel. The Special Rapporteur emphasizes once again his view that an open dialogue among all parties is essential for the protection and promotion of human rights and reminds Israel that he is ready and willing to engage. In addition, he continues to highlight that access to the Occupied Palestinian Territory would play a key role in understanding the fundamental realities of the human rights situation in the territory. The pattern by Israel of non-cooperation with the mandate is a serious concern and contrary to its obligations as a State Member of the United Nations.

3. The present report is based primarily on written submissions as well as consultations with civil society representatives, victims, witnesses, Palestinian government officials and United Nations representatives held in Amman during the Special Rapporteur's annual mission to the region, in June 2018. The Special Rapporteur would like to note that several groups were unable to travel to Amman to meet with him owing to travel restrictions imposed by the Israeli authorities. This was particularly the case with individuals coming from Gaza, and all individuals and organizations based in Gaza were consulted by videoconference as a result.

4. In the present report, the Special Rapporteur focuses on the obligations of Israel under international human rights law and international humanitarian law, as set out in the mandate.[1] The Rapporteur emphasizes that those obligations are by no means limited to Israel and calls upon all actors to ensure respect for international human rights law and international humanitarian law, in accordance with their obligations, noting that violations of those bodies of law by any actor are deplorable and will only hinder the prospects for peace.

5. The Special Rapporteur wishes to express his appreciation to the Government of the State of Palestine for its full cooperation with the mandate. He also wishes to extend his thanks to all those who travelled to Amman to meet with him and to those who were unable to travel but made written or oral submissions. he further extends his thanks once again to Jordan for its support and for the opportunity to hold meetings in Amman.

6. The Special Rapporteur emphasizes once again his admiration and support for the vital work being done by Palestinian, Israeli and international human rights organizations. That work is indispensable not only to the Rapporteur as he seeks to fulfil his mandate, but also to the broader international community. The efforts of human rights organizations to ensure that accurate and complete information about the situation in the Occupied Palestinian Territory is readily available should not go unacknowledged. As highlighted in the report of the Special Rapporteur to the Human Rights Council in March 2017 (A/HRC/34/70), those organizations often face

[1] As specified in the mandate of the Special Rapporteur set out in Commission on Human Rights resolution 1993/2.

significant obstacles in carrying out their work, and the Rapporteur notes that those obstacles have only increased and intensified in the intervening years. The Rapporteur calls upon the international community to ensure that the rights of those undertaking this difficult and, in some cases, perilous work are respected and protected and that any attempts to delegitimize or otherwise discredit the work of those organizations is to be condemned.

II. Current human rights situation

7. Since the previous report of the Special Rapporteur to the General Assembly (A/72/556), the human rights situation in the Occupied Palestinian Territory, particularly in Gaza, has only deteriorated. In his statement following his mission to the region in June 2018, the Rapporteur noted that, in his third visit to the region since assuming his role as mandate holder, he was presented with the bleakest picture yet of the human rights situation in the Occupied Palestinian Territory.[2] The key issues raised during the mission included the continued expansion and development of settlements; the proposal of legislation that could formally annex parts of the West Bank; the possible forcible transfer of vulnerable Bedouin communities; the continued existence of a coercive environment in many parts of the West Bank, including East Jerusalem, seen in measures such as checkpoints, closures, residency revocations and movement restrictions; a continued deterioration in nearly all aspects of life in Gaza; and the apparent excessive use of force against protestors in Gaza, resulting in high numbers of deaths and injuries.

8. The present report cannot present a comprehensive overview of all issues of concern owing to space limitations. Instead, the Rapporteur seeks to highlight here several of the most urgent concerns at the time of writing. That discussion will be followed by an in-depth analysis of the question of annexation, examining both the applicable legal framework as well as the current situation in the Occupied Palestinian Territory.

Gaza

9. The humanitarian and human rights situation in Gaza continues to unravel steadily. The electricity crisis that deepened last year has continued with little change, severely restricting Palestinians' access to medical care, education, and livelihoods. Since the start of 2018, residents of Gaza have not had access to more than six hours of electricity per day; most days they have had only four or five hours.[3] In recent months, the United Nations has called repeatedly for emergency fuel to be provided to Gaza in order to prevent a complete and catastrophic breakdown in essential services, particularly after Israel introduced restrictions on the entry of fuel to Gaza.[4]

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[2] Office of the United Nations High Commissioner for Human Rights (OHCHR), "Occupied Palestinian Territory: bleakest picture yet, says UN expert after regional visit", 29 June 2018. Available at www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23298&LangID=E.

[3] United Nations, Office for the Coordination of Humanitarian Affairs, Gaza Strip electric supply database, available at www.ochaopt.org/page/gaza-strip-electricity-supply.

[4] See for example, United Nations, Office for the Coordination of Humanitarian Affairs, "Funding for emergency fuel needed immediately to avoid catastrophic breakdown in essential services", 5 September 2018. Available at www.ochaopt.org/content/funding-emergency-fuel-needed-immediately-avoid-catastrophic-breakdown-essential-services; and "Entry of emergency fuel urgently needed to avoid closure of hospitals and overflow of sewage in Gaza streets", 8 August 2018. Available at https://www.ochaopt.org/content/entry-emergency-fuel-urgently-needed-avoid-closure-hospitals-and-overflow-sewage-gaza.

The World Bank has reported that the Gaza economy is current in "free fall", with minus 6 per cent growth in the first quarter of 2018; it cited the blockade as the core issue but noted also other contributing factors, including the significant cuts to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and the decision by the Palestinian Authority to cut salaries in Gaza.[5]

Demonstrations and the use of force

10. The demonstrations along the Gaza fence began on 31 March 2018 under the banner of the "Great March of Return", with Palestinians in Gaza calling for their right to return to their homes and for an end to the blockade. Most of the Gaza population comprises Palestinians who have been forcibly expelled from their homes and lands during and after 1948. Gaza has been under a comprehensive land, sea and air blockade for 11 years, with many residents never having had the chance to ever leave Gaza. Access to essential health-care services, education and livelihoods is severely restricted. The unprecedented cuts to the funding of UNRWA, which provides a range of services from medical care to education to protection, will have a devastating impact on the residents of Gaza.[6] In the face of those challenges, residents of Gaza have gathered at the fence between Gaza and Israel each Friday since 30 March, in varying numbers, to protest those conditions.

11. At the time of writing, more than 200 Palestinians had been killed by Israeli security forces in Gaza, 150 of those in the context of demonstrations. Among those killed, 38 were children. On 14 May alone, at least 42 Palestinians were killed in the context of demonstrations, including 6 children.[7] Alongside the high number of fatalities has been an extremely high number of injuries, with more than 21,000 Palestinians wounded, including over 5,300 wounded by live ammunition. Other injuries have been caused by tear gas inhalation, rubber-coated metal bullets, among other things. Also during the reporting period, 1 Israeli was killed and 37 injured.[8] Demonstrations are ongoing and deaths and injuries continue to mount; for example, seven Palestinians, including two children, were killed by Israeli security forces on 28 September 2018.[9] The negative impact of that situation on children cannot be overstated, and despite calls from the international community to ensure respect for the rights of children, they continue to be killed and injured.[10]

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[5] World Bank, "Cash-strapped Gaza and an economy in collapse put Palestinian basic needs at risk", press release, 25 September 2018. Available at www.worldbank.org/en/news/press-release/2018/09/25/cash-strapped-gaza-and-an-economy-in-collapse-put-palestinian-basic-needs-at-risk.

[6] Stephane Dujarric, Spokesman for the Secretary-General, statement for the Secretary-General on United Nations Relief and Works Agency for Palestine Refugees in the Near East, 31 August 2018. Available at www.un.org/sg/en/content/sg/statement/2018-08-31/statement-attributable-spokesman-secretary-general-unrwa.

[7] Jamie McGoldrick, Humanitarian Coordinator for the Occupied Palestinian Territory, statement on Palestinian casualties in the Gaza Strip, 29 September 2018. Available at www.ochaopt.org/content/statement-humanitarian-coordinator-occupied-palestinian-territory-mr-jamie-mcgoldrick and https://www.ochaopt.org/content/fifty-five-palestinians-killed-and-thousands-injured-gaza.

[8] For all figures in this paragraph, see United Nations, Office for the Coordination of Humanitarian Affairs, "Humanitarian snapshot: casualties in the context of demonstrations and hostilities in Gaza", 30 March–4 October 2018. Available at www.ochaopt.org/content/humanitarian-snapshot-casualties-context-demonstrations-and-hostilities-gaza-30-march-4.

[9] McGoldrick, statement on Palestinian casualties in the Gaza Strip.

[10] Jamie McGoldrick, Humanitarian Coordinator in the Occupied Palestinian Territory, James Heenan, Head of OHCHR in the Occupied Palestinian Territory, and Genevieve Boutin, United Nations Children's Fund Special Representative in the State of Palestine, "Children's rights must be put first", joint press statement, 1 August 2018. Available at www.ochaopt.org/content/children-s-rights-must-be-put-first.

12. While the demonstrations have been largely peaceful, incidents have occurred in which Palestinians have thrown Molotov cocktails towards the border or flown burning kites that drop their material on Israeli land, igniting crops. Demonstrators have reportedly attempted to break through the fence between Gaza and Israel. All acts of violence are deplorable and must be condemned. However, serious concerns about the response of Israel to the demonstrations are not alleviated by the fact that some of the demonstrators may have used violent means themselves.[11] The applicable legal framework holds that the test is not the use of violence, but rather whether the law enforcement official faces an imminent threat to life. As the United Nations High Commissioner for Human Rights noted, it is difficult to see how tyre-burning or stone-throwing, or even Molotov cocktails thrown from a significant distance at heavily protected security forces in defensive positions, can be seen to constitute such threat.[12]

13. The Government of Israel has described the demonstrations as a "confrontation campaign" launched by Hamas and has placed the responsibility for the killing of Palestinians by Israeli forces with Hamas.[13] It has also connected the current events in Gaza to the previous escalation of violence in the West Bank, which began in October 2015 and lasted several months, calling the period since 2015 a "wave of terror".[14] The Special Rapporteur notes that, indeed, many of the concerns raised in his 2016 report to the General Assembly (A/71/554), which also addressed the uptick in violence in the West Bank, have only heightened today, in particular the apparent excessive use of force by Israeli security forces. As noted in that report, more than 230 Palestinians were killed in the West Bank, including East Jerusalem, in a roughly one-year period in the context of demonstrations and of attacks or alleged attacks by Palestinians against Israelis (see A/71/554 paras. 9–14). The recent months in Gaza, there have been similarly high numbers of deaths and extremely high numbers of injuries of Palestinians by Israeli forces. The practice of responding with deadly force to demonstrations is greatly at odds with human rights law and with the protected international values of the right to freedom of expression, assembly and association.

14. According to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, weapons and lethal force should be used only as a last resort and only in cases of imminent threat of death or serious injury. The Principles are informative here, given that Israeli forces along the fence between Israel and Gaza are acting in a law enforcement capacity. Palestinian demonstrators face heavily armed and well-equipped Israeli security forces in defensive positions, often hundreds of metres away. Even in cases in which Palestinians have thrown stones, Molotov cocktails or otherwise approached Israeli soldiers, according to the extensive evidence gathered by a number of human rights organizations and reviewed by the Special Rapporteur, the majority of those incidents did not appear to pose a credible threat to life or risk of serious injury to the heavily armed Israeli forces that would

[11] Sari Bashi, "Don't blame Hamas for the Gaza bloodshed", Human Rights Watch, 22 May 2018. Available at www.hrw.org/news/2018/05/22/dont-blame-hamas-gaza-bloodshed.

[12] OHCHR, "Gaza deaths: Israel must address excessive use of force, Zeid says", 27 April 2018. Available at https://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22995&LangID=E.

[13] Israel, Ministry of Foreign Affairs, "Hamas launches confrontation campaign on Israel's border", 6 April 2018. Available at http://mfa.gov.il/MFA/ForeignPolicy/Issues/Pages/Hamas-launches-confrontation-campaign-on-Israels-border.aspx; and Noa Landau, "Netanyahu on Gaza protesters: Israel tried non-lethal methods, but Hamas wants them to die", *Haaretz*, 7 June 2018. Available at www.haaretz.com/israel-news/netanyahu-on-gaza-protesters-hamas-wants-them-to-die-1.6156392.

[14] Israel, Ministry of Foreign Affairs, "Wave of terror 2015–2018", 17 October 2018. Available at http://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Palestinian/Pages/Wave-of-terror-October-2015.aspx.

justify the use of deadly force under the relevant human rights law provisions.[15] Indeed, most of those killed were reportedly unarmed and were shot with live ammunition in the back, head or chest.

15. In that context, and more worrying, a message — that was later deleted — on the social media website Twitter from the official account of the spokesperson of the Israel Defense Forces at the start of the demonstrations on 31 March read: "Nothing was carried out uncontrolled; everything was accurate and measured, and we know where every bullet landed."[16] It should be noted that, in the context of an occupation such as that in Gaza, killings resulting from the unlawful use of force may constitute wilful killings, a grave breach of article 147 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (the Fourth Geneva Convention). Grave breaches of the Geneva Conventions are categorized as war crimes under article 8 of the Rome Statute of the International Criminal Court.[17]

Access and movement restrictions in the context of demonstrations

16. In addition to the use of force, Israel has responded to the demonstrations by imposing restrictions on movement and access that have had a significant negative impact on the residents of Gaza. As highlighted in my report to the Human Rights Council in March 2018 (see A/HRC/37/75, paras. 36–60), residents of Gaza face serious challenges with respect to the right to health owing to the crumbling infrastructure in Gaza resulting from 11 years of blockade by Israel and its closure of Gaza, as well as delays or denials in the issuance of permits that would allow them to travel outside of Gaza for medical treatment. Those concerns continue at present, and the situation has only been exacerbated by the spike in needs associated with the large numbers of injuries sustained during the demonstrations. In June 2018, the Office for the Coordination of Humanitarian Affairs and the World Health Organization warned of the desperate situation of the Gaza health sector, citing the electricity shortage, cuts in salaries for government employees and shortages of essential medicines as key problems that have weakened the sector in recent years and months.[18] In addition to the high number of injuries, the complexity of treating bullet wounds has been raised as a key issue that will impact longer-term recovery of many patients.[19]

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[15] See for example, Human Rights Watch, "Israel: Gaza killings unlawful, calculated", 3 April 2018. Available at www.hrw.org/news/2018/04/03/israel-gaza-killings-unlawful-calculated; B'Tselem, "If the heart be not callous, on the unlawful shooting of unarmed demonstrators in Gaza", position paper, April 2018. Available at www.btselem.org/publications/summaries/201804_if_the_heart_be_not_callous; Al Mezan Center for Human Rights, "Child killed and 112 protestors injured on the 16th Friday of demonstrations", press release, 15 July 2018. Available at www.mezan.org/en/post/23073/Child+Killed+and+112+Protesters+Injured+on+the+16th+Friday+of+Demonstrations.

[16] Hazem Balousha and Oliver Holmes, "The Gaza Strip mourns its dead after protest is met with bullets", *The Guardian*, 31 March 2018. Available at www.theguardian.com/world/2018/mar/31/weary-angry-gazans-bury-dead-after-deadly-border-conflict.

[17] See also, Fatour Bensouda, Prosecutor, International Criminal Court, statement regarding the worsening situation in Gaza, 8 April 2018. Available at www.icc-cpi.int//Pages/item.aspx?name=180408-otp-stat, noting that "violence against civiliaas — in a situation such as the one prevailing in Gaza — could constitute crimes under the Rome Statute of the International Criminal Court … as could the use of civilian presence for the purpose of shielding military activities."

[18] United Nations, Office for the Coordination of Humanitarian Affairs, "Gaza's health sector struggles to cope with massive influx of casualties amid pervasive shortages", Humanitarian Bulletin: Occupied Palestinian Territory, May 2018. Available at www.ochaopt.org/content/gaza-s-health-sector-struggles-cope-massive-influx-casualties-amid-pervasive-shortages.

[19] Médecins sans frontiers, "Gaza: a long ordeal awaits hundreds of wounded from the march of return", 8 August 2018. Available at www.msf.org/gaza-long-ordeal-awaits-hundreds-wounded-march-return.

17. Given the volume of patients and their complex needs, many have required medical care not available in Gaza. However, difficulties in obtaining permits in a timely manner, or at all, have been a serious concern. In the case of gunshot wounds, quick treatment is often essential to avoid amputation. In one case, two injured young men aged 17 and 20 were denied exit permits, which resulted in each having to undergo a leg amputation. The Israeli authorities cited their participation in the demonstrations as the reason for denying the exit permits.[20] On 8 April, the human rights organizations Adalah and Al Mezan filed a petition on behalf of the patients with the Israeli High Court. While awaiting the decision of the Court, both patients underwent amputations. On 16 April, the Court ruled that one of the men, Yousef Al-Kronz, should be permitted to leave Gaza for additional surgery as he was at risk of having his second leg amputated.[21] Denial of access to medical treatment is not justifiable and is in violation of the obligations of Israel under human rights law as well as its obligations as an occupying power under international humanitarian law.

18. In addition to restrictions on the travel of individuals, Israel has in recent months imposed restrictions on the entry of essential goods to Gaza. Israeli authorities have clearly stated that those measures are undertaken in response to the flying of burning kites into Israeli territory that has resulted in significant damage to Israeli crops.[22] That has resulted in severe shortages of, among other things, emergency fuel. As noted above, the United Nations has on several occasions warned of the possibility of total collapse of essential services if fuel is not allowed to enter Gaza. The fact that the entire Gaza population could be subject to an even more serious degradation of conditions owing to the actions of a few points to the imposition of collective punishment, which is prohibited under article 33 of the Fourth Geneva Convention.

Accountability

19. At the onset of the demonstrations, the Secretary-General called for independent and transparent investigations into the incidents.[23] That call has been echoed on numerous occasions by the Office of the United Nations High Commissioner for Human Rights and a number of mandate holders of the special procedures of the Human Rights Council, including the Special Rapporteur.[24] Given the centrality of accountability to any efforts to achieve peace and prevent future violations of international law, the Special Rapporteur commends the decision by the Human Rights Council in its resolution S-28/1 to create an independent commission of

[20] Jack Khoury, "Israel denied passage for medical treatment to two Palestinians who protested in Gaza — and their legs were amputated", *Haaretz*, 12 April 2018. Available at www.haaretz.com/israel-news/two-gazan-protesters-legs-amputated-after-israel-denies-entry-1.5993161.

[21] Al Mezan Center for Human Rights, "Israel Supreme Court rules on Adalah-Al Mezan petition: Israel must let Palestinian youth wounded by Israeli gunfire at protests leave Gaza for urgent care", press release, 16 April 2018. Available at www.mezan.org/en/post/22707.

[22] BBC, "Israel closes main Gaza goods crossing in response to arson attacks", 10 July 2018. Available at www.bbc.com/news/world-middle-east-44777297.

[23] Farhan Haq, Deputy Spokesman for the Secretary-General, statement for the Secretary-General on the situation in Gaza, 30 March 2018. Available at www.un.org/sg/en/content/sg/statement/2018-03-30/statement-attributable-spokesman-secretary-general-situation-gaza.

[24] OHCHR, "UN human rights experts condemn killings of Palestinians near Gaza fence by Israeli security forces", 17 April 2018; "UN rights experts condemn Israel's response to Palestinian protests in Gaza", 6 April 2018; "Press briefing note on Gaza and Guatemala", 17 April 2018; "Gaza deaths: Israel must address excessive use of force, Zeid says", 27 April 2018. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22950, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22924, www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22925&LangID=E, and www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22995&LangID=E, respectively.

inquiry as an important means of seeking to end impunity and achieving more effective redress for victims than has been realized to date.

20. In that resolution, the Council decided to dispatch the commission, noting a "systematic failure by Israel to carry out genuine investigations in an impartial, independent, prompt and effective way, as required by international law, into the violence and offences against Palestinians by the occupying forces, and to establish judicial accountability for its actions in the Occupied Palestinian Territory, including East Jerusalem."

21. In April 2018, Israeli Defense Minister Avigdor Lieberman said that no investigations would be launched into the killings along the Gaza border.[25] Subsequently, in August, Brigadier General Sharon Afek decided to open an investigation into the deaths of two young Palestinians: a 15-year-old who, according to video footage, was shot in the back near the fence in March; and an 18-year-old who was shot during demonstrations near the fence in July.

22. In April, Israeli and Palestinian human rights organizations filed two petitions with the Israeli High Court demanding that it assess the legality of the Israel Defense Forces open-fire regulations.[26] In May, the Court issued its decision, relying heavily on the State's assessment of the facts, and — without examining the rules of engagement of the Israel Defense Forces — deferred legal questions to the Forces' internal investigation mechanism.[27] The High Court's decision has raised serious concerns, including among legal scholars, about the permissiveness of the judicial scrutiny of the Israeli military's conduct, as it seems to accept arguments by the State that justify the potential use of lethal force against demonstrators that do not pose any threat to life or serious injury.[28] That raises additional concerns about the possibility of achieving accountability within the military justice system.

23. The existence of a system in which cases can be brought to the Military Advocate General is necessary but not sufficient for achieving accountability. There must also be evidence that the system itself works in an independent, impartial and transparent manner, in line with international standards. The Rapporteur echoes the High Commissioner's sentiment that failures by the Military Advocate General undermine current and future efforts to achieve accountability for those incidents by "creating the misconception that cases were effectively addressed through the military justice system" (see A/HRC/37/41, para. 14).

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[25] Loveday Morris and Hazem Balousha, "No inquiry into Gaza border deaths, says Israeli defense minister", *Washington Post*, 1 April 2018. Available at www.washingtonpost.com/world/middle_east/no-inquiry-into-gaza-border-deaths-says-israeli-defense-minister/2018/04/01/f2562ca2-352d-11e8-b6bd-0084a1fb66987_story.html?utm_term=.cdab7561d170.

[26] Adalah, "Adalah and Al Mezan petition supreme court: order Israeli army to stop using snipers, live ammunition against Gaza protests" 24 April 2018. Available at www.adalah.org/en/content/view/9488; Gisha, "HCJ petition: revoke open-fire regulation permitting live fire on demonstrators not endangering human life", 15 April 2018. Available from http://gisha.org/updates/8804; and Yesh Din, "HCJ petition: revoke rules of engagement permitting live fire at non-dangerous demonstrators near Gaza fence", 15 April 2018. Available at www.yesh-din.org/en/hcj-petition-revoke-rules-engagement-permitting-live-fire-non-dangerous-demonstrators-near-gaza-fence/.

[27] Yesh Din, "HCJ petition: revoke rules of engagement permitting live fire at non-dangerous demonstrators near Gaza fence".

[28] See for example, Eliav Lieblich, "Collectivizing threat: an analysis of Israel's legal claim for resort to force on the Gaza border", Just Security, 16 May 2018. Available at www.justsecurity.org/56346/collectivizing-threat-analysis-israels-legal-claims-resort-force-gaza-border/; and Elena Chachko and Yuval Shany, "The Supreme Court of Israel dismisses a petition against Gaza rules of engagement", Law Fare, 26 May 2018. Available at www.lawfareblog.com/supreme-court-israel-dismisses-petition-against-gaza-rules-engagement.

III. Annexation

24. The annexation of territory is strictly prohibited in modern international law. Indeed, that prohibition has acquired the status of a jus cogens norm in international law, meaning that it is accepted as a fundamental principle of law by the international community, for which no exception or derogation is permitted.[29] Territorial conquest and annexation are now regarded as intolerable scourges from darker times, because they invariably incite devastating wars, political instability, economic ruin, systematic discrimination and widespread human suffering.[30] Although annexation has yet to be completely eradicated in the modern world, its occurrence has become much more infrequent since the creation of the United Nations, with the international community refusing to recognize annexation claims in many cases.

25. Nevertheless, annexation remains a burning issue in the Israeli-Palestinian conflict. Israel, the occupying power, has twice formally annexed occupied territory under its control: East Jerusalem (in 1967 and 1980) and the Syrian Golan Heights (in 1981).[31] Its refusal to relinquish the two territories in the face of widespread condemnation by the international community has contributed to regional instability and severely limited the efficacy of international law. Furthermore, throughout the years of occupation since the June 1967 war, Israel has continuously entrenched its de facto annexation of the West Bank by imposing intentionally irreversible changes to occupied territory that are proscribed by international humanitarian law: the establishment of 230 settlements, populated by more than 400,000 Israeli settlers; the physical and political enclosure of the 2.6 million West Bank Palestinians; the extension of Israeli laws to the West Bank and the creation of a discriminatory legal regime; the unequal access to natural resources, social services, property and land for Palestinians in the occupied West Bank; and the explicit statements by a wide circle of senior Israeli political leaders calling for the formal annexation of parts or all of the West Bank. Those annexation trends have only intensified over the past two years. As one Israeli human rights lawyer recently stated, "[the Government of Israel] is peeling away the last remnants of loyalty to the notion of the occupation as temporary and to any obligation to negotiate with the Palestinians. The goal is clear: a single State containing two people, only one of which has citizenship and civil rights."[32]

26. Accordingly, the focus of the second half of the present report is devoted to exploring the trends of the de jure annexation of East Jerusalem by Israel and its de facto annexation of the West Bank, their incompatibility with international legal norms and their foreclosing of the right to self-determination by the Palestinian people.

A. Annexation in modern international law

27. After 1945 and the bitter experience of decades of global wars fuelled by ambitions of territorial expansionism, the international community resolved to forbid war, conquest and annexation as instruments of national policy. The Charter of the United Nations, in its Article 2 (3) and (4), requires States Members of the United Nations to settle their differences by peaceful means, with the corollary that

[29] Rainer Hofmann, "Annexation", in *Max Planck Encyclopedia of Public International Law* (Oxford University Press, 2013), paras. 21 and 38.

[30] Robert Yewdall Jennings, *The Acquisition of Territory in International Law* (Manchester, United Kingdom of Great Britain and Northern Ireland, Manchester University Press, 1963, 2017).

[31] These de jure annexations have been condemned by the Security Council in its resolutions 478 (1980) and 497 (1981).

[32] Michael Sfard, "Israel and annexation by lawfare", *The New York Review of Books*, 10 April 2018. Available at www.nybooks.com/daily/2018/04/10/israel-and-annexation-by-lawfare/.

annexation had now become illegal.[33] The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (the Declaration on Friendly Relations), adopted unanimously in 1970 by the General Assembly, declares that no territorial acquisition or special advantage resulting from the threat or use of force shall be recognized as legal. From 1967, the Security Council has expressly affirmed the inadmissibility of the acquisition of territory by war or force on at least eight occasions.[34] The inadmissibility principle has also been endorsed repeatedly by the General Assembly and the Human Rights Council.[35] The International Court of Justice stated in 2004 that this principle has achieved the status of customary international law.[36] Leading international legal scholars are widely in agreement that the prohibitions against conquest and annexation are cornerstones of modern international law.[37] Annexation is incompatible with the foundational principles of the laws of occupation, which stipulate that the occupying power's tenure is inherently temporary, not permanent or even indefinite, and that it must rule the territory as a trustee for the benefit of the protected population under occupation and not for its own aggrandizement.[38] Annexation is also profoundly in breach of the fundamental right to self-determination, an *erga omnes* obligation under international law.[39]

B. Effectiveness of the prohibition

28. Recently, scholars have affirmed that the legal and diplomatic prohibition of conquest and annexation has had a significant dampening effect on its occurrence in the post-1945 period. In the period 1816–1928, until the signing of the General Treaty for Renunciation of War as an Instrument of National Policy (the Briand-Kellogg Pact), there had been an average of 1.21 conquests per year, with the acquisition of an average of 295,486 square kilometres annually. Between 1928 and 1948, during the initial period following the Pact, only a slight decline in the patterns of conquest and annexation were evident: there was an average of 1.15 conquests per year, involving an average of 240,739 square kilometres. However, since 1948, with the emergence of the United Nations and the consolidation of the prohibitions within international law, there has been a dramatic decline: only 0.26 conquests per year, amounting to an annual average of 14,950 square kilometres. Most importantly, many of the modern conquests and annexations have not been recognized by States. Thus, while war may still sometimes produce a military victory, it does not often yield lasting legal victories.[40]

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[33] Hofmann, "Annexation", para. 14.

[34] The latest is Security Council resolution 2334 (2016).

[35] Most recently in General Assembly resolution 72/14 and Human Rights Council resolution 37/36.

[36] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, para. 87.

[37] For example: Malcolm N. Shaw, *International Law*, 8th ed. (Cambridge, United Kingdom, Cambridge University Press, 2017), p. 372. "No territorial acquisition resulting from the threat or use of force shall be recognized as legal"; Jennings, *The Acquisition of Territory in International Law*, p. 56: "Conquest as a title to territorial sovereignty has ceased to be a part of the law."

[38] Orna Ben-Naftali, Michael Sfard and Hedi Viterbo, *The ABC of the OPT: A Legal Lexicon of the Israeli Control over the Occupied Palestinian Territory* (Cambridge, Cambridge University Press, 2018), p. 399: "The normative framework limits the occupant's powers in terms of both material scope and time, forbidding it to act in a manner intended to generate permanent results … the occupation does not confer title to the territory; … it is to be managed as a trust; and … it is temporary."

[39] *Legal Consequences of the Construction of a Wall, I.C.J. Reports 2004*, paras. 88 and 155.

[40] Oona Hathaway and Scott J. Shapiro, *The Internationalists: How a Radical Plan to Outlaw War Remade the World* (New York: Simon and Schuster, 2017), chap. 13.

C. Definition of de facto annexation

29. "De jure annexation" is widely recognized in international law as the formal declaration by a State that it is claiming permanent sovereignty over territory that it had forcibly acquired from another State.[41] In contrast, "de facto annexation" has been generally employed as a descriptive term to illustrate the actions of a State in the process of consolidating — often through oblique and incremental measures — the legislative, political, institutional and demographic facts to establish a future claim of sovereignty over territory acquired through force or war, but without the formal declaration of annexation.

30. Given the broad international consensus respecting the illegality of annexation, acquisitive States in modern times that wish to annex territory have a strong incentive to obfuscate the reality of their plans.[42] Typically, they will work assiduously to create a series of "facts on the ground" in order to buttress a sovereign claim, while postponing a formal declaration because of the fear of a diplomatic and political reaction by the international community. With that in mind, the Special Rapporteur submits that, if the prohibition against annexation is to be coherent and effective, particularly in the context of the occupied Palestinian territory, then the liberal purposes of international law should ensure that the absolute prohibition against annexation extends to those incremental, yet substantive, measures being taken by a State in violation of international humanitarian law to lay the ground for a future claim of sovereignty over conquered and/or occupied territory.[43]

31. Relying upon legal reasoning developed by Omar Dajani, the Rapporteur proposes that the following factors should be employed to assess whether a State engaging in de facto annexation has crossed the tipping point in illegal annexation:

(a) Effective control. The State is in effective control of territory that it forcibly acquired from another State;[44]

(b) Exercises of sovereignty. The State has taken active measures that are consistent with permanency and a sovereign claim over parts or all of the territory or through prohibited changes to local legislation, including the application of its domestic laws to the territory, demographic transformation and/or population transfer, the prolonged duration of the occupation and/or the granting of citizenship;[45]

(c) Expressions of intent. This would include statements by leading political leaders and/or State institutions indicating, or advocating for, the permanent annexation of parts or all of the occupied territory;[46]

(d) International law and direction. The State has refused to accept the application of international law, including the laws of occupation, to the territory

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[41] Hofmann, "Annexation", para. 1.

[42] Omar M. Dajani, "Israel's creeping annexation" (2017), *American Journal of International Law*, vol. 111, p. 52.

[43] Ibid. p. 53, "... while a formal act of annexation is powerful evidence of intent, the lack of one is by no means dispositive."

[44] Ibid, p. 52, citing an element of the older test in international law as to when an annexation had been accomplished.

[45] Ibid, p. 53, "... it is difficult to conceive of a measure more indicative of a state's intent to annex territory — short of a declaration to that effect — than its establishment of civilian settlements upon that territory". In addition, the application by the occupying power of its domestic laws to the occupied territory is incompatible with the laws of occupation and is prohibited precisely to discourage annexation, see Ben-Naftali Sfard and Viterbo, *The ABC of the OPT*.

[46] Dajani, "Israel's creeping annexation", p. 52, citing an element of the older test in international law as to when an annexation had been accomplished. Also see Shaw, *International Law*, p. 371, "intention to annex was a crucial aspect of the equation."

and/or is failing to comply with the direction of the international community with respect to the present and future status of the territory.[47]

32. The essence of the above test is to determine whether, on the facts of each particular conquest and/or occupation, the State has displayed a pattern of behaviour sufficiently consistent with annexation and inconsistent with the right to self-determination and the fundamental principles of occupation, including temporality, trusteeship and good faith (see A/72/556). If so, then the State would be in violation of the international prohibition against annexation, even in the absence of a formal declaration.

33. With that legal foundation in mind, we can proceed to examine the conduct of Israel, the occupying power, with respect to East Jerusalem and the West Bank.

D. Annexation and East Jerusalem

34. Several weeks after the military occupation of East Jerusalem and the West Bank — among other territories — by Israel in the June 1967 war, Israel formally extended its law and administration to East Jerusalem and 28 surrounding Palestinian villages in the West Bank, creating a much-enlarged Jerusalem municipality. The 1967 annexation absorbed not only the 6,400 dunams of East Jerusalem — previously ruled by Jordan — but also 65,000 dunams in the West Bank, attaching them to the 38,000 dunams belonging to West Jerusalem. In General Assembly resolutions 2253 (ES-V) and 2254 (ES-V), the international community immediately and overwhelmingly rejected that de jure annexation. Israel refused to comply with those resolutions and began to establish permanent demographic, structural and institutional facts on the ground to consolidate its sovereignty claim.

35. Subsequently, in July 1980, the Israeli Knesset enacted the quasi-constitutional Basic Law: Jerusalem, Capital of Israel, which proclaimed that Jerusalem, "complete and unified", was the capital of Israel. Again, the international community, this time through the Security Council, condemned the annexation in the strongest terms and declared that the Basic Law was a violation of international law and a threat to peace and security. Furthermore, in its resolution 478 (1980), the Council determined that all legislative and administrative measures and actions taken by Israel, the occupying Power, that had altered or purport to alter the character and status of Jerusalem were null and void and must be rescinded.

36. The United Nations, by Council resolution 2334 (2016) and Assembly resolution ES-10/19, has recently reaffirmed those declarations, establishing the illegality of the formal Israeli annexation of East Jerusalem.

37. As part of its continuing efforts to ensure that its de jure annexation of East Jerusalem is irreversible, Israel has over the past five decades extended its national laws and civil authority to the occupied section of the city; issued numerous declarations of permanent sovereignty; transformed the physical features and historic character of East Jerusalem; moved some of its national institutions, including the Ministry of Justice; and embarked upon an intensive programme of creating and

[47] Dajani, "Israel's creeping annexation", p. 53, "an occupant's refusal to accept the law of occupation's applicability would seem probative for drawing this conclusion [acting as a sovereign] — as would a refusal to comply with duties under that law that relate specifically to distinguishing the rights of an occupant from those of a sovereign."

expanding Israeli settlements.[48] Two trends in particular are evident, the objective of both being the perpetuation by Israel of its annexation of East Jerusalem.

38. First, the consistent policy of Israel since 1967 has been to secure an overwhelming Israeli Jewish majority in Jerusalem, achieved through settler implantation and demographic gerrymandering. Early in the occupation, Israeli national and municipal leaders adopted two official policy objectives aimed at sustaining permanent Israeli annexation of East Jerusalem: to expand the size of the city, and thereby increase its absorptive capacity for Israeli Jewish settlement;[49] and to establish a targeted "demographic balance" of 70 per cent Jewish Israelis and 30 per cent Palestinians in the city.[50] Later, in the 2000s, those leaders added a third policy objective: to prevent the development of any national Palestinian institutions in Jerusalem and thereby dampen Palestinian nationalist sentiment. Notwithstanding the best efforts of Israel since, none of those objectives have been fully successful. No State has formally recognized the claim by Israel to its sovereignty over East Jerusalem. Demographically, Palestinian Jerusalemites in 2016 constituted 38 per cent of the city's population, up from 28 per cent in 1980.[51] Furthermore, a 2018 poll indicated that 97 per cent of Palestinian East Jerusalem residents strongly objected to the idea that Israel should maintain its annexation of East Jerusalem.[52] Nonetheless, since 1967, Israel has taken a number of substantial steps to entrench its sovereign claim over East Jerusalem, as described below.

39. A total of 15 official Israeli Jewish settlements have been built within the expanded boundaries of East Jerusalem since 1967, with a total population of 210,000 Israeli settlers. Those settlements constitute a grave breach under international humanitarian law.[53] The purpose of the settlements is to create such a large critical mass of settlers that no future Government of Israel would be politically able either to oppose them or uproot them. One disfiguring effect of the settlements, together with the separation wall and the surrounding Israeli settlements just outside of the current municipal boundaries, has been to sever East Jerusalem — the centre of Palestinian life — from the West Bank, thus significantly eroding their economic, social, familial and political interdependency.[54] Most recently, the Jerusalem municipality has permitted Israeli settlers to dispossess Palestinian Jerusalemites in the Sheikh Jarrah and Silwan neighbourhoods, resulting in frequent friction and violence.[55]

40. In addition, the laws and national authority of Israel apply throughout East Jerusalem, although in a manner that systemically discriminates against the

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[48] Prime Minister Ehud Barak stated in November 2000, "maintaining our sovereignty over Jerusalem and boosting its Jewish majority have been our chief aims, and toward this end Israel constructed large Jewish neighbourhoods in the eastern part of the city, which house 180,000 residents, and large settlements on the periphery of Jerusalem, like the city of Ma'aleh Adumim and Givat Ze'ev." See http://mfa.gov.il/MFA/PressRoom/2000/Pages/Address%20by%20PM%20Barak%20on%20the%20Fifth%20Anniversary%20of%20th.aspx.

[49] Bimkom — Planners for Planning Rights, *Trapped by Planning: Israeli Policy, Planning and Development in the Palestinian Neighbourhoods of East Jerusalem* (2014).

[50] B'Tselem, *A Policy of Discrimination: Land Expropriation, Planning and Building in East Jerusalem* (1995).

[51] Jerusalem Institute for Policy Research, *Statistical Yearbook of Jerusalem*, No. 32 (2018), table III/4.

[52] Udi Shaham, "Poll: 97% of east J'lem residents oppose Israeli control over entire city", *Jerusalem Post*, 11 May 2018. Available at www.jpost.com/Arab-Israeli-Conflict/Poll-97-percent-of-east-Jlem-residents-oppose-Israeli-control-over-entire-city-556147.

[53] Security Council resolution 478 (1980).

[54] See www.btselem.org/jerusalem.

[55] Civic Coalition for Palestinian Rights in Jerusalem, *Forced Eviction in Occupied East Jerusalem* (forthcoming).

Palestinian community in the city.[56] One prime example is the planning laws.[57] Since 1967, Israel has expropriated over 38 per cent of the land base of East Jerusalem exclusively for Israeli settlements and has zoned only 15 per cent (amounting to 8.5 per cent of Jerusalem as a whole) for the residential needs of Palestinian Jerusalemites. That has created a housing and planning crisis: only 8 per cent of all building permits issued by the Jerusalem municipality are granted for Palestinian neighbourhoods in East Jerusalem, despite the fact that the population density in Palestinian neighbourhoods is twice that of Israeli neighbourhoods.[58] According to the Association for Civil Rights in Israel, the local and district planning authorities in Israel have not advanced a single outline plan for the Palestinian neighbourhoods for the past decade, resulting in a planning freeze.[59] A disquieting consequence of that planning discrimination has been the demolition of hundreds of Palestinian homes ordered by Israeli authorities over the past decade that had been constructed without the nearly impossible to obtain building permits. In total, 123 housing units were destroyed in 2016 alone, and more than 15,000 Palestinian homes (in which 100,000 Palestinians reside, representing one third of the Palestinians in East Jerusalem) remain under the threat of demolition.[60] Many Palestinians in East Jerusalem are also unable to register their land ownership with State authorities, resulting in insecure tenure and the diminished value of their properties.[61] The planning crisis is part of a broader long-term neglect by the Jerusalem municipality of Palestinian East Jerusalem, which — in comparison to West Jerusalem — endures much higher poverty rates, a much smaller allocation of the municipal budget spending, poor social and health services and crumbling public infrastructure.[62] Although East Jerusalem was forcibly annexed by Israel, its Palestinian residents remain excluded from the relative prosperity of the rest of the city.

41. Furthermore, the legal status of almost all Palestinian Jerusalemites under Israeli law is as a "permanent resident", which is the same legal status given to foreign nationals in Israel. Palestinian permanent residents pay taxes and are entitled to receive public benefits and services but, unlike citizens, they possess no secure right to remain in Jerusalem. While under the laws of occupation the Palestinian Jerusalemites are "protected persons", Israel does not recognize that status. Since 1967, Israel has revoked the residency status of more than 14,500 East Jerusalemite Palestinians; since 1995, Palestinian residents of East Jerusalem have to prove that their "centre of life" is in the city in order to retain their permanent resident status or risk losing their status and thus their ability to return to their homes in East Jerusalem. Not having permanent resident status prevents Palestinians from other parts of the Occupied Palestinian Territory from legally residing or even visiting Jerusalem. In addition, Israeli laws severely restrict the right to family reunification by denying

[56] See generally, Society of St. Yves, *Everyone Pays the Price: Case Study of Jerusalem* (2017).

[57] Bimkom, *Trapped by Planning*.

[58] See www.btselem.org/jerusalem. This was measured by population per room.

[59] Association for Civil Rights in Israel, "East Jerusalem: facts and figures 2017", 21 May 2017. Available at https://law.acri.org.il/en/2017/05/24/east-jerusalem-facts-and-figures-2017/.

[60] Ir Amim and Bimkom — Planners for Planning Rights, *Deliberately Planned: A Policy to Thwart Planning in the Palestinian Neighbourhoods of Jerusalem* (2017).

[61] "East Jerusalem is the double-edged sword of Israel's capital", *Haaretz*, 10 April 2018. Available at www.haaretz.com/opinion/editorial/east-jerusalem-is-the-double-edged-sword-of-israel-s-capital-1.5988771.

[62] United Nations Conference on Trade and Development (UNCTAD), *The Palestinian Economy in East Jerusalem: Enduring Annexation, Isolation and Disintegration*, UNCTAD/GDS/APP/2012/2 (New York and Geneva, 2013).

many Palestinian Jerusalemites the ability to extend permanent resident status to their spouses and children who do not have recognized residency in Jerusalem.[63]

42. The other prominent trend is the more aggressive approach taken by the Israeli political leadership in recent years to counter the growing Palestinian demographic presence in East Jerusalem and to bolster the claim by Israel to sovereignty over East Jerusalem. That trend has taken two forms. First, the route of the wall in the 2000s around Jerusalem has deliberately placed a number of Palestinian neighbourhoods on the West Bank side of the wall. And second, the Israeli Knesset has adopted several pieces of legislation, and is considering several other proposed statutes, which seek to ensure that its annexation of East Jerusalem becomes irreversible.

43. The construction of the wall by Israel — which Israel states was built as a security barrier but which also stretches deep inside the occupied territory in many areas — has not followed the boundaries of the expanded Jerusalem municipality. Around Jerusalem, it absorbed some West Bank territory within the wall while unilaterally placing several large Palestinian Jerusalem neighbourhoods, including Kufr Aqab and Shu'fat, outside of the wall. Those Palestinian Jerusalemites living beyond the wall — estimated to comprise 120,000–140,000 persons — officially still live within Jerusalem, still have their "permanent resident" status, still pay taxes to the Municipality and some of whom work in Jerusalem by crossing Israeli checkpoints to enter the city.[64] However, the Israeli authorities have largely abandoned those neighbourhoods. Even in comparison to the negligible municipal services provided to the Palestinian neighbourhoods within the wall, the excluded neighbourhoods are almost entirely forgotten: they live without basic social services and infrastructure, such as water, garbage collection, road building and sewage; there is a serious shortage of educational and welfare institutions; high crime rates persist; they suffer from housing shortages and overcrowding; and, without an effective system for granting permits, virtually all buildings are constructed without official permission.[65] The Minister for Jerusalem Affairs in the Israeli cabinet, Ze'ev Elkin, proposed in October 2017 that the detached Palestinian neighbourhoods be removed from the Jerusalem municipality and placed under a new council administration.[66] It is an inescapable conclusion that the route of the separation wall around Jerusalem — which includes all the Israeli settlements in East Jerusalem as well several nearby West Bank Israeli settlements, while excluding approximately one third of the Palestinian Jerusalemites — has been designed for demographic reasons to maximize the Israeli population in Jerusalem while seeking to substantially reduce the city's Palestinian presence.[67]

44. Recent legislatives initiatives at the Israeli Knesset have also aimed at consolidating Israeli sovereignty over East Jerusalem and resetting the "demographic balance" in the city.[68] Two significant initiatives in particular stand out, as described below.

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[63] Civic Coalition for Palestinian Rights in Jerusalem, *Israel's Occupation: 50 Years and Counting* (2018).

[64] Association for Civil Rights in Israel, "East Jerusalem: facts and figures 2017".

[65] Rachel Kushner, "'We are orphans here': life and death in East Jerusalem's Palestinian refugee camp", *New York Times*, 1 December 2016. Available at www.nytimes.com/2016/12/01/magazine/we-are-orphans-here.html.

[66] Nir Hasson and Jonathan Lis, "Israeli Minister to push plan aimed at reducing number of Arabs in Jerusalem", *Haaretz*, 29 October 2017. Available at www.haaretz.com/israel-news/.premium-israeli-minister-proposes-plan-to-reduce-number-of-arabs-in-jerusalem-1.5461071.

[67] Al-Haq, "A legal analysis of bills and legislation to revoke the permanent residencies of Palestinians and alter the status of Jerusalem", legal brief, 7 March 2018. Available at www.alhaq.org/en/wp-content/uploads/2018/03/LegalBriefJerusalem.pdf.

[68] Ir Amim, "Destructive unilateral measures to redraw the boarders of Jerusalem" (January 2018).

45. **The Basic Law: Jerusalem, Capital of Israel**. In January 2018, the Knesset amended the Basic Law to stipulate that any proposal to transfer "the authority related to the area of Jerusalem" in final status negotiations "to a foreign body" could only be authorized if a super-majority of 80 (out of the 120) members of the Knesset approved. The Basic Law had previously provided that such a transfer could occur with a simple majority vote of the Knesset. The amendment would make it more difficult to obtain Knesset support for any peace agreement that would recognize Palestinian sovereignty over East Jerusalem. The amendment also creates the legislative authority to redraw the municipal boundaries of Jerusalem to exclude the detached Palestinian neighbourhoods that are on the West Bank side of the wall.

46. **The "Greater Jerusalem" bill**. Throughout 2017, the Knesset considered a legislative proposal that would have incorporated five West Bank Israeli settlements — Beitar Illit, Ma'aleh Adumin, Giv'at Ze'ev, Gush Etzion and Efrat — as autonomous submunicipalities of the city, while maintaining local autonomy for the settlements. That "soft annexation" bill would have added 120,000 Israeli settlers to Jerusalem, thus enhancing the city's Jewish majority. The bill was sponsored by MK Yoav Kish (Likud), who stated that it would "weaken the Arab hold on the capital" and "enshrine the Jewish majority."[69] The bill was subsequently tabled by the Israeli Prime Minister, citing the need to "coordinate" its legislative agenda on that legislation with the United States of America.[70]

47. At the time of writing, the Palestinian Bedouin village of Khan al-Ahmar in the West Bank, just east of Jerusalem, is being threatened by Israeli authorities with demolition. In the opinion of the Special Rapporteur, and others, the resulting forced eviction of the residents of Khan al-Ahmar would undoubtedly lead to forcible transfer, a war crime under international law.[71] A motivating reason for the removal of the village would to be clear Palestinian communities from the 12-square-kilometre area known as the "E1 corridor", thereby securing territorial continuity between Jerusalem and the large West Bank settlement of Ma'ale Adumim. The realization of longstanding plans by Israel to develop that area through the construction of more Israeli settlements would serve several annexation purposes: (a) to consolidate Israeli territorial sovereignty and demographic domination in the greater Jerusalem area; (b) effectively to sever the remaining territorial contiguity between the northern and southern West Bank, thus extinguishing any faint remaining hope of a viable two-State solution; and (c) to isolate further Palestinian East Jerusalem from the West Bank.[72]

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[69] Yossi Verter, "Israeli ministers set to vote annexing West Bank settlements to Jerusalem", *Haaretz*, 26 October 2017. Available at www.haaretz.com/israel-news/ministers-to-vote-on-annexing-west-bank-settlements-to-jerusalem-1.5460310.

[70] Jonathan Lis and Amir Tibon, "Netanyahu: Israel must coordinate Jerusalem annexation bill with U.S.", *Haaretz*, 29 October 2017.

[71] Amnesty International, "Israel/OPT: demolition of Palestinian village of Khan al-Ahmar is cruel blow and war crime", 30 September 2018. Available at www.amnesty.ca/news/israelopt-demolition-palestinian-village-khan-al-ahmar-cruel-blow-and-war-crime; Noa Landau, "European Parliament warns: eviction, demolition of Khan al-Ahmar would be war crime", *Haaretz*, 13 September 2018. Available at https://www.haaretz.com/israel-news/.premium-european-parliament-warns-eviction-demolition-of-khan-al-ahmar-would-be-war-crime-1.6469916.

[72] Zena Agha, "Israel's annexation crusade in Jerusalem: the role of Ma'ale Adumim and the E1 corridor", Al-Shabaka, 26 March 2018. Available at https://al-shabaka.org/briefs/israels-annexation-crusade-in-jerusalem-the-role-of-maale-adumim-and-the-e1-corridor/.

E. Annexation and the West Bank

48. Israel has yet to declare its formal annexation of any part of the occupied West Bank, as it presently lacks international political support from any quarter for such a move.[73] Its official position to the rest of the world is that, while it denies that the West Bank (which it refers to as "Judea and Samaria") is occupied and it has rejected the applicability of the Fourth Geneva Convention, it remains willing to negotiate its future status with the Palestinians.[74] However, in practice, Israel has taken multiple steps consistent with establishing a sovereign claim over the West Bank since shortly after the occupation began in June 1967, and those steps have escalated significantly in recent years.

49. The first Israeli civilian settlements in the West Bank, initially camouflaged as military camps, were established in the summer of 1967.[75] Since then, Israel has built and incentivized approximately 230 settlements throughout the West Bank, inhabited by more than 400,000 settlers. No country creates civilian settlements in occupied territory unless it has annexationist designs in mind, which is why the international community has designated the practice of settler-implantation as a war crime.[76] The political purpose of the Israeli settlement enterprise has always been to establish sovereign facts on the ground and to obstruct Palestinian self-determination. The Drobles plan of 1978, which formulated the motivation for the then-fledgling settlement enterprise, declared: "State land and uncultivated land must be seized immediately in order to settle the areas between the concentration of minority population [i.e., the Palestinians in the West Bank] and around them, with the object of reducing to the minimum the possibility for the development of another Arab state in these regions."[77]

50. During five decades of occupation, Israel has steadily entrenched its sovereign footprint throughout the West Bank.[78] The infrastructure of the territory — the sewage connections, the communication systems and the electrical network — has been completely integrated into the domestic system of Israel. The West Bank water system, with its plentiful mountain aquifers, have been owned since 1982 by Mekorot, the national water company, with the benefits flowing primarily to Israel.[79] The highway network, which before 1967 had been primarily a north-south system, has been reconfigured as an east-west system to connect the settlements with each other and with Israeli cities, thereby disrupting Palestinian transportation.[80] The West Bank economy is subject to a single customs union agreement with Israel, enabling the more powerful economy to dominate and flourish, while the weaker economy withers through de-development and dependence.[81] The natural resources of the West Bank

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[73] Noa Landau and others, "White House strongly denies as 'false' Netanyahu's claims of talks with U.S. on annexing West Bank settlements", *Haaretz*, 12 February 2018. Available at www.haaretz.com/israel-news/.premium-netanyahu-settlement-annexation-being-discussed-with-u-s-1.5810741.

[74] See www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/israeli%20settlements%20and%20international%20law.aspx.

[75] Idith Zertal and Akiva Eldar, *Lords of the Land: The War over Israel's Settlements in the Occupied Territories, 1967–2007* (New York, Nation Books, 2007).

[76] Rome Statute of the International Criminal Court, art. 8 (2) (b) (viii).

[77] David Kretzmer, "Settlements in the Supreme Court of Israel" (2017), 111 *American Journal of International Law*, vol. 111 (2017), p. 42.

[78] "Regularization law", in Ben-Naftali, Sfard and Viterbo, *The ABC of OPT*.

[79] See www.btselem.org/water.

[80] Dajani, "Israel's creeping annexation", p. 54.

[81] UNCTAD, "Report on the UNCTAD Assistance to the Palestinian People: developments in the Economy of the Occupied Palestinian Territory", TD/B/64/4, September 2017.

are largely controlled by Israel and primarily exploited for its benefit.[82] Israeli legislation and laws have been extended by the Israeli military commander to West Bank settlers on a personal/territorial basis, while a disfigured version of occupation law, without many of its protections and guarantees, applies to the Palestinians.[83] The allocation of "State land" in the West Bank that is assigned for any use has been given almost exclusively to Israeli settlements (99.76 per cent), despite the fact that settlers make up only 12 per cent of the population in the West Bank.[84]

51. Most significantly, Israel exercises full civil and security control over Area C of the West Bank, which comprises more than 60 per cent of the territory. A remnant of the lifeless Oslo Process, Area C has been administered by Israel as an exclusive land base for its West Bank settlements. The World Bank has noted that 68 per cent of Area C is designated for Israeli settlements, 21 per cent for closed military zones and 9 per cent for nature reserves.[85] In the 1 per cent of Area C that remains for the approximately 180,000–300,000 Palestinian habitants, the Israeli Civil Administration has imposed a highly restrictive planning regime that makes permit application approval for Palestinian residential and commercial construction virtually impossible.[86] While Israeli settlers enjoy the same full range of legal rights and economic freedoms as Israelis living in Israel, Palestinians in Area C lack essential community infrastructure and are faced with a strangled economy, ubiquitous military checkpoints, limited access to their natural resources and a steady rejection of almost all of their submitted master plans,[87] all of which amounts, according to the United Nations, to a coercive environment that is forcing Palestinians to leave.[88] A 2015 amendment to a 2003 military order regarding unauthorized buildings allows the Commander of the Central Command to evict entire Palestinian communities in Area C without the previous need to acquire demolition orders for each structure.[89]

52. What civil society organizations once called the "creeping Israeli annexation" of the West Bank has now been relabelled "leaping annexation"[90] and "occup'annexation".[91] The Israeli political leadership has perceived that the current international environment — particularly its relationship with the present United states administration — is conducive to its aspirations to solidify its permanent domination over the West Bank, notwithstanding the lack of support for formal annexation. As a result, there has been a flurry of soft-annexation legislation since early 2017, which appears to be laying the foundation for hard-annexation legislation in the future. In a recent editorial, *Ha'aretz*, the leading liberal daily in Israel, stated that the Government has been practising legal annexation through its recent

[82] Shawan Jabarin, "Business and human rights in Palestine: a case study on the illegal exploitation of Palestinian natural resources", Al-Haq, 30 January 2014.

[83] Yehuda and others, *One Rule, Two Legal Systems: Israel's Regime of Laws in the West Bank* (Association for Civil Rights in Israel, 2014).

[84] Americans for Peace Now, "Land allocation in the West Bank — for Israelis only", July 2018.

[85] World Bank, *West Bank and Gaza: Area C and the Future of the Palestinian Economy* (Washington, D.C., 2013).

[86] See www.btselem.org/topic/planning_and_building.

[87] Ahmad El-Atrash, "Israel's stranglehold on Area C: development as resistance", Al-Shabaka, 27 September 2018. Available at https://al-shabaka.org/commentaries/israels-stranglehold-on-area-c-development-as-resistance/.

[88] Tovah Lazaroff, "UN: Israel policies forcing Palestinians to leave Area C of the West Bank", *Jerusalem Post*, 27 July 2016. Available at www.jpost.com/Arab-Israeli-Conflict/UN-Israel-policies-forcing-Palestinians-to-leave-Area-C-of-the-West-Bank-462569.

[89] Peace Now (Settlement Watch), "Mentality of annexation: changes in the interpretation of the laws regarding occupation", January 2018.

[90] Americans for Peace Now, "From creeping to leaping: annexation in the Trump-Netanyahu era", April 2018.

[91] 11.11.11, "Occup'annexation: the shift from occupation to annexation in Palestine", Brussels, 2017.

application of "more and more Knesset laws to the West Bank while erasing the Green Line," resulting in two different and unequal legal systems for the two peoples residing in the territory. "This phenomenon has a name," it stated, "and Israel will no longer be able to renounce reality and deny to the international community that it is an apartheid State, with all that this implies."[92]

53. Over the past two years, the Israeli Knesset has either enacted or considered a number of statutes that extend Israeli law to the West Bank or lay the foundation for some form of future annexation.[93] Among the most significant statutes, bills and other initiatives comprising that recent legislative trend are described below.

54. The Settlement Regularization in "Judea and Samaria" Law allows for the retroactive legalization of outposts built on private Palestinian land. While it offers compensation to Palestinian landowners, it denies them any right to property restoration. It was passed by the Knesset in February 2017 but remains unimplemented pending the resolution of a petition to the Israeli High Court by a number of human rights organizations challenging its legality. At the High Court, the Government of Israel argued that the Knesset is not subject to international law and is the source of legal authority in the occupied Palestinian territory. The Israeli Attorney General, while opposing the law, has stated that existing laws already provide for the legalization of Israeli constructions on private Palestinian land in the West Bank (see A/HRC/37/43 paras. 16–17).

55. The Higher Education Law applies the jurisdiction of the Israeli Council for Higher Education, which governs post-secondary institutions in Israel, to academic institutions in the West Bank settlements. It thereby grants the same academic status to those institutions (notably, Ariel University based in the settlement of Ariel) as for all other Israeli universities. The Law, which was enacted in February 2018, is an illustration of the direct application of domestic Israeli law to the occupied territory, which is both forbidden under international law and a clear step towards annexation.

56. The Jewish Nation-State Law is a quasi-constitutional Basic Law, which means that it takes precedence over ordinary Knesset legislation. Adopted in July 2018, it proclaims that the Jewish people alone have the right to self-determination in Israel. One prominent concern about the new Basic Law — based on the use of the term "Land of Israel" — is that it may be applied to East Jerusalem and the West Bank to justify the protection of Israeli settlements and other annexational trends. Article 7 of the Basic Law states: "the State views the development of Jewish settlements as a national value and will act to encourage and promote its establishment and consolidation."

57. The Administrative Affairs Court Law (amendment), adopted in July 2018, enlarges the jurisdiction of the Israeli Administrative Affairs Court to assume a very broad authority to adjudicate petitions by West Bank Palestinians on a range of issues, including planning and construction issues in Area C, barring individuals from certain areas of the West Bank and the issuance of travel permits. It removes the authority over those subject areas from the Israeli High Court. The primary criticism of the amendment is that it expands the jurisdiction of a domestic Israeli court to include Area C, which becomes another piece in the step-by-step extension of Israeli law to the occupied West Bank.

58. The Israeli political leadership has become much more uninhibited over the past two years in expressing out loud what the actions of the Government of Israel have

[92] "The Knesset wants apartheid", *Haaretz*, 1 June 2018. Available from www.haaretz.com/opinion/editorial/the-knesset-wants-apartheid-1.6137367.

[93] Foundation for Middle East Peace, "Israel's 'creeping annexation' policies — tables", September 2018, provides an invaluable overview of recent annexation steps taken by the Knesset. See also https://goo.gl/c9DK3L.

been proclaiming for years. Annexation is in the air, and intention is now being openly expressed in words as well as in deeds. One significant illustration of the changing environment was the unanimous vote on 31 December 2017 by the 1,000-member central committee of the ruling Likud party to support a non-binding resolution to formally annex the West Bank. The resolution called upon Likud's elected officials "... to allow free construction and to apply the laws of Israel and its sovereignty to all liberated areas of Jewish settlement in Judea and Samaria."[94] In addition, in recent months, a number of Israeli cabinet ministers have openly embraced the formal annexation of parts or all of the West Bank:

- Prime Minister Benjamin Netanyahu: "This is the land of our fathers, this is our land. We are here to stay, forever ... There will be no uprooting of communities in the Land of Israel."[95]
- Minister for Technology Ofir Akunis: "All land of Israel is ours, and this cannot be disputed or be divided. The concept of settlements blocs is no longer relevant because there are no Arabs to negotiate with anymore."[96]
- Minister for Education Naftali Bennett: "Today, the Israeli Knesset moved from heading toward establishing a Palestinian State to heading toward sovereignty in Judea and Samaria ... The outpost regulation bill is the tip of the iceberg in applying sovereignty."[97]
- Minister for Transportation Yisrael Katz: "Today I will propose at the security cabinet that we pass the 'Greater Jerusalem Law' that includes extending Israeli sovereignty to the surrounding communities of greater Jerusalem: Ma'ale Adumim, Givat Ze'ev, Beitar Illit and the Etzion Bloc, while joining them to the city of Jerusalem and strengthening it by adding territory and Jewish population."[98]
- Minister for Justice Ayelet Shaked: "I think we should apply the Israeli law to the Israeli towns and villages [settlements], and to normalize the life there, and in the far future, to apply the Israeli law in Area C [the occupied West Bank]. In Area C, there are a half-million Israelis [settlers] and 100,000 Palestinians; they will have citizenship with full rights, of course, like myself. And that Area A and B will be part of a confederation with Gaza, with Jordan."[99]

[94] Chaim Levinson, "Netanyahu's party votes to annex West Bank, increase settlements", *Haaretz*, 1 January 2018. Available at www.haaretz.com/israel-news/.premium-netanyahu-s-party-votes-to-annex-west-bank-increase-settlements-1.5630099.

[95] Breaking Israel News, "Netanyahu: Israel will stay in Judea and Samaria forever", 29 August 2017. Available at www.breakingisraelnews.com/93927/netanyahu-israel-will-stay-judea-samaria-forever/.

[96] Peter Beaumont, "On a rocky ridge over Ramallah, settlers put their faith in Trump", *The Guardian*, 11 February 2017. Available at www.theguardian.com/world/2017/feb/12/israel-settlers-put-their-faith-in-trump-netanyahu-visit-white-house.

[97] Jewish Link of New Jersey, "Jewish Home's Bennett Says Outpost Bill Paves Way for Annexation of Judea and Samaria", 8 December 2016. Available at www.jewishlinknj.com/world-us/16063-jewish-home-s-bennett-says-outpost-bill-paves-way-for-annexation-of-judea-and-samaria.

[98] Times of Israel, "Challenging Netanyahu, senior minister floats annexation of Jerusalem-area settlements", 22 January 2017. Available at www.timesofisrael.com/challenging-netanyahu-senior-minister-floats-annexation-of-jerusalem-area-setlements/.

[99] Interview with Ayelet Shaked, Justice Minister of Israel, AIPAC Policy Conference, Washington, D.C., 7 March 2018. Available from http://hamodia.com/2018/03/07/exclusive-interview-justice-minister-ayelet-shaked/.

- Minister for Public Security Gilad Erdan: "Now is the time to extend sovereignty to areas on which there is no controversy [that they will remain part of Israel in a final status agreement]".[100]

- Minister for Jerusalem Affairs Ze'ev Elkin: "Halas ['enough' in Arabic] with the story of two States. There is no other option but the State of Israel, certainly between the Jordan [River] to the [Mediterranean] sea there will be one State."[101]

- Deputy Defence Minister Eli Ben-Dahan: "We have to focus on the main issue. We are in Judea and Samaria because this is our land, and we are here so that we will never leave it. Sovereignty must be applied in Judea and Samaria as soon as possible."[102]

- Minister for Housing Yoav Galant: "Strategically speaking, the Jordan Valley is the eastern security zone of the State of Israel, the mountainous area is the holding area, and the Jerusalem-Ashdod-Hadera and Dan is the vital living space in which more than 5 million Israelis live ... We must continue to keep Yehuda, Shomron, and the Jordan Valley under full control and to strengthen settlement in these areas."[103]

59. Those statements of political intent, together with the colonizing facts on the ground of Israel, its legislative activity and its refusal to adhere to its solemn obligations under international law or to follow the direction of the international community with respect to its 51-year-old occupation, have established the probative evidence that Israel has effectively annexed a significant part of the West Bank and is treating that territory as its own. While Israel has not yet declared formal sovereignty over any parts of the West Bank, the Special Rapporteur submits that the strict prohibition against annexation under international law applies not only to a formal declaration, but also to those acts of territorial appropriation by Israel that have been a cumulative part of its efforts to stake a future claim of formal sovereignty over the occupied Palestinian territory.

IV. Conclusion

60. A fundamental tenet of modern international law is the legal maxim *ex turpi causa non oritur actio*: a lawbreaker cannot benefit from his or her illegal act.[104] In 1967 and again in 1980, the international community clearly stated that the annexation by Israel of East Jerusalem breached international law and was null and

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[100] Marissa Newman, "Build in settlements to punish Palestinians, top minister urges", Times of Israel, 13 February 2017. Available at www.timesofisrael.com/build-in-settlements-to-punish-palestinians-top-...inister-urges/?link_id=12&can_id=beb87055f757f06618a29df863283e75&source=email-what-were-reading-what-to-expect-from-the-netanyahu-trump-meeting&email_referrer=what-were-reading-what-to-expect-from-the-netanyahu-trump-meeting&email_subject=what-were-reading-what-to-expect-from-the-netanyahu-trump-meeting.

[101] Tovah Lazaroff, "Elkin: start preparing for one million settlers in the West Bank", *Jerusalem Post*, 14 November 2017. Available at www.jpost.com/Israel-News/Elkin-Start-preparing-for-one-million-settlers-in-the-West-Bank-514251.

[102] Israel National News, "The quiet war against terrorism continues", 30 May 2002. Available at www.israelnationalnews.com/News/News.aspx/24370.

[103] The Yeshiva World, "Galant: to keep Yehuda, Shomron and the Jordan Valley", 22 March 2018. Available at www.theyeshivaworld.com/news/israel-news/1495709/galant-to-keep-yehuda-shomron-and-the-jordan-valley.html?utm_source=General+Mailing+List&utm_campaign=bd366ef597-EMAIL_CAMPAIGN_2018_03_30&utm_medium=email&utm_term=0_586030c60d-bd366ef597-82754635.

[104] Lasa Oppenheim, *International Law: A Treatise*, 8th ed., vol. 1, *Peace* (London, Longmans, Green and Company, 1955), p. 574.

void.[105] It has also spoken decisively about the illegality of the Israeli settlement enterprise,[106] which is the political and demographic engine that has transformed the Israeli occupation into an annexation. However, those repeated condemnations of Israeli annexationist actions have lacked any meaningful steps by the international community to insist upon accountability. Despite the ongoing record of Israel of non-compliance with the directions of the international community, it has rarely paid a meaningful price for its defiance, and its appetite for entrenching its annexationist ambitions in East Jerusalem and the West Bank has gone largely unchecked. A deep-rooted problem at the heart of the conflict has not been the clarity of international law, but the unwillingness of the international community to enforce what it has proclaimed. As one academic stated succinctly: "The problem is not international law per se, but its lack of enforcement; that in the Middle East, international law is closer to power than to justice."[107] Nothing could more effectively refute that judgment than for the international community to act on the overwhelming evidence before it and insist that Israel either fully annul its annexations and relinquish its occupation, or be prepared to bear the full consequences of accountability for its mocking of international law.

V. Recommendations

61. **The Special Rapporteur recommends that the Government of Israel comply fully with international law and bring a complete end to its 51 years of occupation of the Palestinian territory. He further recommends that the Government take the following measures immediately:**

(a) **End the blockade and closure of Gaza, lift all restrictions on imports and exports as well as on the movement of people, and facilitate full access to medical care, consistent with genuine Israeli security concerns;**

(b) **Ensure that regulations governing the use of force for Israeli security forces are in strict compliance with international standards, with particular attention to the use of deadly force;**

(c) **Ensure accountability for alleged violations of international humanitarian law and international human rights law by Israeli security forces, with particular attention to the demonstrations in Gaza;**

(d) **Take measures to address concerns raised about the independence, impartiality and transparency of the military justice system.**

62. **With respect to concerns related to the annexation of territory, the Special Rapporteur recommends that Israel:**

(a) **Comply with all relevant resolutions of the Security Council and the General Assembly with respect to East Jerusalem and the West Bank and relinquish any claim of sovereignty over the territory;**

(b) **Ensure freedom of movement within the Occupied Palestinian Territory, including between Gaza and the West Bank, including East Jerusalem;**

(c) **Comply fully with Security Council resolution 2334 (2016) concerning the settlements;**

[105] Security Council resolution 2334 (2016), General Assembly resolution 72/14 and Human Rights Council resolution 37/36.

[106] Security Council resolution 2334 (2016).

[107] Victor Kattan, *From Coexistence to Conquest: International Law and the Origins of the Arab-Israeli Conflict, 1891–1949* (London: Pluto Press, 2009), p. 4.

(d) Pursue a good faith approach to the administration of the West Bank, including East Jerusalem and Gaza as occupied territory, adhering to the tenets of international human rights law and international humanitarian law, with a view to bringing the occupation to a complete conclusion within a reasonable time period and enabling Palestinian self-determination.

63. **The Rapporteur further recommends that the international community:**

(a) In line with common article 1 to the Geneva Conventions, take all measures necessary to respect and ensure the respect by Israel, and all other relevant parties, of the solemn obligations of international humanitarian law;

(b) Seek to hold Israel to the international standards by which all States are to be held, including the prohibition on annexation;

(c) Ensure full accountability of Israeli political and military officials who are responsible for grave breaches of international law in the occupied Palestinian territory;

(d) Commission a United Nations study on the legality of the Israeli annexation and continued occupation of the Palestinian territory.

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Programme budget for the biennium 2018–2019

Request for a subvention to the Extraordinary Chambers in the Courts of Cambodia

Report of the Advisory Committee on Administrative and Budgetary Questions on the proposed programme budget for the biennium 2018–2019

I. Introduction

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on a request for a subvention to the Extraordinary Chambers in the Courts of Cambodia (A/73/331), in which he provides details on the progress achieved by the Extraordinary Chambers and a projection regarding the anticipated use of the approved commitment authority for 2018, and seeks the approval by the General Assembly of an appropriation for a subvention for the international component of the Chambers in the amount of $9.7 million for 2019. During its consideration of the report, the Advisory Committee met with representatives of the Secretary-General, who provided additional information and clarification, concluding with written responses received on 15 October 2018.

II. Background

2. In its resolution 57/228 A on the Khmer Rouge trials, the General Assembly welcomed the efforts of the Secretary-General and the Government of Cambodia towards the establishment of Extraordinary Chambers within the existing courts structure of Cambodia, with international assistance, for the prosecution of crimes committed during the period of Democratic Kampuchea. Subsequently, the Assembly approved, in its resolution 57/228 B, an agreement that regulated the cooperation between the United Nations and the Government of Cambodia in bringing to trial senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognized by Cambodia, that had been committed during the period from 17 April 1975 to 6 January 1979. In paragraph 3 of the resolution, the Assembly also decided that the expenses of the

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Chambers would be defrayed by the United Nations in accordance with the relevant provisions of the Agreement and would be borne by voluntary contributions from the international community.

3. In 2005, the Secretary-General reported to the General Assembly that sufficient contributions and pledges had been received to fund the international staff of the Extraordinary Chambers and their operations for a sustained period of time (see A/60/565, para. 3). The above-mentioned Agreement between the United Nations and the Government of Cambodia thus entered into force on 29 April 2005. Since then, the Secretary-General has issued eight reports on the Khmer Rouge trials,[1] in which he has provided updates on the progress achieved towards establishing and operating the Chambers.

4. The Extraordinary Chambers comprise both national and international components that are separately financed. The Government of Cambodia is responsible for the salaries and emoluments of the Cambodian judges and local personnel, while those of the international judges, the international co-prosecutor and personnel recruited by the United Nations are to be funded through voluntary contributions.

5. In his report of 2012 on the Khmer Rouge trials, the Secretary-General first alerted Member States to the adverse cash position and steadily worsening financial position of the Extraordinary Chambers. At that time, he indicated that the international component faced an acute funding shortfall that could jeopardize the future operations of the Chambers (see A/67/380, para. 66). In 2013, the Secretary-General informed the General Assembly that the national component was also experiencing a serious shortfall in pledges for that year, creating a funding crisis of greater severity than that of the international component (see A/68/532, para. 31).

6. Subsequently, following its consideration of the report of the Secretary-General and the conclusions and recommendations of the Advisory Committee thereon (see A/68/7/Add.12), the General Assembly, in its resolution 68/247 B, authorized the Secretary-General, as an exceptional measure, to enter into commitments in an amount not to exceed $15.54 million to supplement the voluntary financial resources of the international component for the period from 1 January to 31 December 2014. Those funds, however, were never drawn upon, as voluntary funding eventually covered in full the international component's obligations during 2014.

7. In each of his subsequent reports, the Secretary-General has continued to highlight the significant and persistent financial insecurity faced by the international component of the Extraordinary Chambers. Owing to the ongoing trend of declining voluntary contributions, the Secretary-General has requested the approval of sequential subventions to supplement the voluntary resources for the international component and enable the continuation of the operations of the Chambers. Following its consideration of the reports of the Secretary-General and the conclusions and recommendations of the Advisory Committee thereon (see A/69/652, A/70/7/Add.20, A/71/550 and A/72/7/Add.7), the General Assembly authorized the Secretary-General, as an exceptional measure, to enter into commitments for the international component in an amount not to exceed $12.1 million for 2015 (see resolution 69/274 A), $12.1 million for 2016 (see resolution 70/248 A), $11 million for 2017 (see resolution 71/272 A) and $8 million for 2018 (see resolution 72/262 A) (see the annex to the present report).

[1] A/62/304, A/67/380, A/68/532, A/69/536, A/70/403, A/71/338, A/72/341 and A/73/331.

III. Case progress and management

8. Periodic reports of the Secretary-General have contained details concerning the progress of cases before the Extraordinary Chambers.[2] Information on the progress made in the case files during the most recent reporting period is provided in sections I and II of the most recent report of the Secretary-General (A/73/331). Upon request, the Advisory Committee was provided with additional details regarding the judicial progress and the case completion plan.

9. Since their inception, the Extraordinary Chambers have concluded proceedings in three cases: case 001 against Kaing Guek Eav (alias "Duch"), concluded in 2012; case 002/01 against Nuon Chea and Khieu Samphan on crimes against humanity, concluded in 2016; and case 004/01 against Im Chaem, concluded in 2018. With respect to case 004/01, the Secretary-General indicates in his report that the co-investigating judges issued a closing order on 10 July 2017, determining that Im Chaem was not subject to the personal jurisdiction of the Chambers. On 29 June 2018, the Pre-Trial Chamber disposed of the appeal on personal jurisdiction, thus concluding the proceedings in the case.

10. At the time of reporting, four cases against five accused remained pending, namely, case 002/02 against Nuon Chea and Khieu Samphan on genocide and other crimes, case 003 against Meas Muth, case 004/02004/02 against Ao An and case 004 against Yim Tith. The Advisory Committee was informed that an oral summary of the findings and the disposition of the trial judgment in case 002/02, which had commenced on 17 October 2014, was scheduled for 16 November 2018. The Committee was also informed that in case 004/02, the co-investigating judges had issued separate closing orders on 16 August 2018. Judgments on any appeals against the closing orders are expected by the second quarter of 2019. The closing orders in cases 003 and 004 are expected by the fourth quarter of 2018 and in the second quarter of 2019, respectively. Judgments on any appeals against the closing orders in cases 003 and 004 are expected by the third quarter of 2019 and by the first quarter of 2020, respectively.

11. The Advisory Committee was provided, upon request, with the latest available case completion plan, dated 30 June 2018, and was informed that the case completion plan dated 30 September 2018 was not available at the time of the Committee's review. **The Committee expects that the latest case completion plan will be provided to the General Assembly at the time of its consideration of the report of the Secretary-General.**

12. The Advisory Committee notes that the above-mentioned timelines have shifted by two or more quarters compared with the projected timelines reflected in the previous report of the Secretary-General (see A/72/341, paras. 3–4). On the basis of the latest available projections, case 002/02, if appealed, is expected to conclude by the third quarter of 2020, whereas it is currently not known whether cases 003, 004/2 and 004 will be dismissed or proceed to trial, in whole or in part, pending the conclusion of proceedings related to the closing orders. Upon enquiry, the Committee was informed that timelines for these cases would be projected if and when they resulted in trials, which would then be expected to extend beyond 2020. Accordingly, the closing date of the Extraordinary Chambers cannot yet be projected.

13. **The Advisory Committee notes the progress made in the judicial proceedings and stresses again the importance of the regular updates to the comprehensive case completion plan. The Committee again emphasizes the need**

[2] See A/58/617, A/59/432, A/59/432/Add.1, A/60/565, A/62/304, A/67/380, A/68/532, A/69/536, A/70/403, A/71/338 and A/72/341.

to take all necessary measures to expedite case completion, including more effective planning, while fully respecting the requirements of the judicial process (see also A/72/7/Add.7, para. 12). Considering the length of the proceedings to date, uncertainty over the timelines for the remaining cases and the likelihood of continued judicial activity for several years beyond the current financial period, the Committee reiterates its concern regarding the related potential financial implications and the decreasing voluntary contributions.

14. In his report, the Secretary-General notes the need to develop, in a timely manner, a framework for the completion of the work of the Extraordinary Chambers and for the performance of any necessary residual functions, and, accordingly, he indicates his intentions to undertake consultations in this regard (see A/73/331, paras. 23 and 49). Upon enquiry, the Advisory Committee received a clarification that the Secretary-General currently had no mandate to establish a residual mechanism for the Chambers. The Committee also recalls that the Chambers were established by the National Assembly of Cambodia within the domestic court system.

IV. Current financial position

15. Information on the financial status of both the international and national components of the Extraordinary Chambers is contained in annex II to the report of the Secretary-General. In its consideration of that document, the Advisory Committee was provided, upon request, with detailed information, broken down by year, regarding the amounts of voluntary contributions received from international donors and the Government of Cambodia, the amounts of subvention received from the regular budget, total requirements and expenditures, unspent balances and other relevant data, with respect to both the international and national components of the Chambers for the past 10 years (see the annex to the present report).

International component

16. The Secretary-General indicates that the group of interested States approved a budget for 2018 amounting to $18.9 million for the international component. Subsequently, the Extraordinary Chambers submitted a revised budget proposal for 2018 amounting to $17.7 million to reflect the impact of the slower-than-anticipated progress in their judicial activities.

17. In his report, the Secretary-General describes the combined efforts of the principal donors group, the Secretariat and the Special Expert on the United Nations Assistance to the Khmer Rouge Trials to broaden the donor base, while maintaining the support of traditional donors. Upon enquiry, the Advisory Committee was informed that one additional Member State had joined the group of interested States in November 2017 and two others had joined the principal donors group in 2018. Nevertheless, fundraising efforts have not halted the downward trend in voluntary contributions for the international component, which fell from $17.6 million in 2015 to approximately $9.5 million in 2017. Pledges and contributions are expected to reach $9.7 million for 2018 (ibid., para. 30). Upon enquiry, the Committee was informed that, as at 30 September 2018, the total amount of voluntary contributions pledged or received for the international component, all from traditional donors and members of the principal donors group, amounted to $9.4 million for 2018. Further observations with respect to fundraising activities are included in section V below.

18. The Secretary-General also indicates that cost-saving measures have been put in place for the international component through the freezing of recruitment against vacant posts unless hiring is absolutely necessary, and cost-mitigating measures in such areas as travel, operating expenses and contractual services (ibid., para. 35).

Upon enquiry, the Advisory Committee was informed that, as at 30 September 2018, 26 staff posts and 3 judicial positions for the international component were vacant. Recruitment for such international staff at the Extraordinary Chambers takes four to five months on average. **While welcoming the cost-saving measures taken by the Extraordinary Chambers, the Committee considers that leaving essential posts vacant may have a detrimental effect on the case completion timelines, and expects that all efforts will be made to ensure that such vacancies are filled expeditiously.**

National component

19. The Secretary-General indicates in his report that, in the first years of its operation, the national component was funded largely by voluntary contributions covering 80 per cent of the budget, with the remainder paid by the Government of Cambodia, which also provides in-kind contributions of buildings, facilities and local services. The contribution of the Government has increased significantly over the years and, since 2015, has covered over 60 per cent of the national component's requirements, with assistance from international donors to meet the remaining portion of its financial obligations pursuant to the Agreement of cooperation with the United Nations. Upon enquiry, the Advisory Committee was informed that as at 30 September 2018, the level of voluntary contributions for 2018 amounted to $5.48 million, resulting in a shortfall of approximately $220,000 yet to be secured to meet the revised requirements of $5.7 million for the operations of the national component in 2018.

20. **The Advisory Committee notes the commitments made by the Government of Cambodia to meeting the terms of its Agreement with the United Nations. The Committee trusts that the Secretary-General will continue to actively engage with the Government to ensure that the obligations arising from the terms of the Agreement are met.**

V. Resource requirements for 2019 and request for a subvention to the Extraordinary Chambers

21. For 2019, the proposed revised resource requirements for the international component amount to $16,014,100 for posts and non-post resources, representing a decrease of $1,699,600 (or 9.6 per cent) compared with the revised budget for 2018.

22. Resource requirements in the amount of $8.5 million would provide for the continuation of 115 posts (11 D-2, 1 D-1, 4 P-5, 11 P-4, 18 P-3, 6 P 2, 11 Field Service, 11 National Professional Officer and 42 Local level), representing a reduction of 16 posts compared with the requirements for 2018. As required by the General Assembly in its resolution 69/274 A, a full justification is provided for the resource requirements without prejudice to the voluntary nature of the current funding arrangements. In his previous report, the Secretary-General indicated that 85 positions would be required in 2019 (see A/72/341, para. 36). The Secretary-General attributes the variance in post requirements to the extended judicial timelines requiring continued staff resources for 2019. **While welcoming the proposed reductions, the Advisory Committee notes that the pace of downsizing is slower than anticipated and reiterates its call for efficiency and expeditiousness in case completion in full respect for the requirements of the judicial process.**

23. On the basis of the pattern of contributions in the previous biennium, the Secretary-General indicates that it is expected that resources will be pledged in piecemeal and varied amounts, with insufficient fund balances available at any given time to ensure the reasonable duration of staff contracts (see A/73/331, para. 40). To

address the funding shortfall, the Secretary-General is seeking the approval by the General Assembly of an appropriation for a subvention for the international component of the Extraordinary Chambers in the amount of $9.7 million, which, when combined with estimated voluntary contributions amounting to $6.3 million in 2019, would provide the funding necessary to secure the operations of the Chambers during 2019 (ibid., para. 41).

24. The Secretary-General indicates in his report that he will continue his intensive fundraising efforts. The requested subvention would allow for the continued operations of the Extraordinary Chambers, pending the receipt of additional voluntary contributions necessary for their operations throughout the year. The Secretary-General proposes that the subvention be available to be drawn upon should the extrabudgetary funds on hand be insufficient to meet the international component's salary and operational costs (ibid., para. 41).

25. **In view of the persistent funding challenges faced by the Extraordinary Chambers, the Advisory Committee reiterates the ongoing need for intensified fundraising efforts, including by broadening the donor base, in support of the expeditious completion of the mandate of the Chambers.**

26. With reference to table 3 of the annex to the present report, the Advisory Committee also notes that since 2015, there has been a downward trend in the budget levels and expenditures over this period. The shortfalls in voluntary contributions for the international component have been covered by subventions approved by the General Assembly.

VI. Other matters

End-of-service liabilities

27. In addition to requesting an appropriation in the amount of $9.7 million by way of subvention for 2019, the Secretary-General requests that the General Assembly allow the full drawdown of the commitment authority and the retention of the unutilized portion of voluntary contributions received, if any, at the end of each fiscal year, starting in 2018, to rebuild an operational reserve for the Extraordinary Chambers. The Secretary-General indicates in his report that the operational reserve was depleted to meet payroll expenses in 2012 owing to shortfalls in voluntary contributions and that the terms of the use of the subvention have not allowed the rebuilding of any reserves to meet end-of-service liabilities (ibid., para. 45).

28. Upon enquiry, the Advisory Committee was informed that, in line with previous practice, the 2019 budget included provisions for end-of-service obligations amounting to $294,937 in respect of 2 judges (D-2) and 10 staff (1 P-4, 4 P-3, 1 P-2, 1 Field Service, 2 National Professional Officer and 1 Local level) placed against positions proposed for abolishment in 2019. The Secretary-General indicates, however, that additional end-of-service liabilities estimated at $1,838,200 would arise should a lack of funding result in the non-extension of contracts and appointments beyond the scheduled separations.

29. The General Assembly, in its resolution 72/262 A, authorized the Secretary-General to enter into commitments in an amount not exceeding $8 million to supplement the voluntary financial resources of the international component of the Extraordinary Chambers for 2018. Under these terms, the use of the subvention is limited to the extent that voluntary contributions are insufficient to cover the operations of the Chambers. Upon enquiry, the Advisory Committee was informed that, should voluntary contributions be received in excess of the remaining requirements for the Chambers, any regular budget funds provided to the Chambers

for the period would be refunded to the United Nations. The Committee considers that the Secretary-General, while explicitly referring to the rebuilding of the operational reserve through any unutilized voluntary contributions, is de facto proposing the rebuilding of the depleted reserve through the subvention from the regular budget.

30. **In this regard, the Advisory Committee recommends against the full drawdown of the subvention, emphasizing that voluntary contributions should remain the main source of funding of the operations and obligations of the Extraordinary Chambers. The Committee also recalls that the subvention is merely a bridging financing mechanism approved on the basis of set conditions (see A/72/7/Add.7, para. 36) and for the defined purpose of enabling the carrying-out of the judicial mandate of the Chambers (see paras. 35–38 below).**

Remuneration of international judges

31. During its consideration of the previous report of the Secretary-General, the Advisory Committee made observations and recommendations with respect to the level of the honorariums and emoluments received by the international judges of the Extraordinary Chambers (see A/72/7/Add.7, paras. 14–17). At that time, the Committee was informed, upon enquiry, that, as indicated in paragraph 20 of the terms and conditions of service of the international judges, the amount of the net remuneration paid to the judges was equal to the gross (rather than net) salary of a staff member at the D-2 level, including a post adjustment component applicable to Cambodia. The Committee was also informed by the Executive Secretary of the International Civil Service Commission that United Nations salaries were set in net terms (with the applicable post adjustment). In addition, the Committee was informed that a review of the terms and conditions of the international judges by the United Nations Secretariat had been initiated. The Committee's recommendation, endorsed by the General Assembly in its resolution 72/262 A, was that the current practice of providing the international judges with a net remuneration in the amount of a gross remuneration be discontinued as soon as possible.

32. During its consideration of the report of the Secretary-General, the Advisory Committee was informed, upon enquiry, that the implementation of the above-mentioned recommendation remained pending. Consultations between the Department of Economic and Social Affairs and the Office of Human Resources Management had been held during the first half of 2018 to address the recommendation. The Committee was also informed that the draft revision of the conditions of service still had to be reviewed and shared with the international judges and the international co-prosecutor for comment, prior to its submission for approval to the group of interested States. The revised conditions of service would also include the alignment of other entitlements, such as travel and relocation, with the standard United Nations entitlements for international staff. The Extraordinary Chambers are composed of 12 international judges at the D-2 level, receiving a monthly salary of $16,349, and 17 national judges at the D-1 level, receiving a monthly salary of $5,637.

33. **The Advisory Committee notes with serious concern that the recommendation referred to in paragraph 31 above, endorsed by the General Assembly, has not been implemented, and recommends that the General Assembly request the Secretary-General to discontinue without further delay the current practice of providing the international judges with a net remuneration in the amount of a gross remuneration.**

Audit

34. With respect to a query concerning the audit coverage of the United Nations Assistance to the Khmer Rouge Trials technical cooperation project, the Advisory Committee was informed that the most recent audit undertaken by the Office of Internal Oversight Services of the international component of the Extraordinary Chambers had been issued on 3 February 2014. **The Committee recommends that the General Assembly request the Secretary-General to entrust the Office of Internal Oversight Services with conducting an audit of the international component of the Extraordinary Chambers and submitting its findings to the General Assembly during the main part of the seventy-fourth session.**

VII. Conclusions and recommendations

35. **The Advisory Committee recalls that the General Assembly, in its resolution 57/228 B, decided that the expenses of the international component of the Extraordinary Chambers should be borne by voluntary contributions from the international community. Once again, the Committee notes the adverse funding situation of the Chambers, the persisting financial difficulties and the increasing reliance on the commitment authorized by the Assembly. In this regard, the Committee recalls resolutions 69/274 A, 70/248 A, 71/272 A and 72/262 A, in which the Assembly encouraged all Member States to provide voluntary support for both the international and national components of the Chambers and requested the Secretary-General to continue his intensive efforts to obtain additional voluntary contributions.**

36. **Furthermore, the Advisory Committee again notes that, after six consecutive requests since 2013 for subventions to support the international component of the Extraordinary Chambers, the practice is in fact no longer exceptional in nature. Nevertheless, the Committee continues to stress that voluntary contributions should remain the major source of funding for the Chambers and that additional efforts should be made to avoid continued reliance on the subvention.**

37. **The Advisory Committee therefore again reaffirms its view that a decision to appropriate an amount of the budget of the international component for 2019 would undermine the voluntary nature of the current funding arrangements and related fundraising efforts. Nonetheless, in view of the projected funding shortfall in the international component for 2019, the fluid nature of outstanding pledges and commitments and the need to ensure the continued operations of the Extraordinary Chambers, the Committee recommends that the General Assembly authorize the Secretary-General to enter into commitments in an amount not to exceed $7.5 million to supplement the voluntary financial resources of the international component for the period from 1 January to 31 December 2019 as a bridging financing mechanism, in lieu of an appropriation. The Committee also recommends that the Assembly request the Secretary-General to report on the use of the commitment authority to the Assembly during the main part of its seventy-fourth session.**

38. **The Advisory Committee continues to stress that its recommendations are made on the basis that:**

(a) **The Secretary-General engages in all efforts to increase the level of voluntary contributions (see paras. 24–25 above);**

(b) **Should voluntary contributions be received in excess of the remaining requirements for the Extraordinary Chambers for 2019, any regular budget**

funds provided to the Chambers for this period would be refunded to the United Nations;

(c) Appropriate measures for achieving operational savings and efficiencies in the Extraordinary Chambers are in place;

(d) The Extraordinary Chambers engage in all efforts to expeditiously complete their judicial mandate;

(e) Appropriate monitoring and reporting arrangements are in place to ensure an incremental release of funds to the Extraordinary Chambers, based on their monthly cash position;

(f) The Secretary-General continues his efforts to ensure that the terms of the Agreement between the Government of Cambodia and the United Nations are observed.

Annex

Table 1

Approved budget vs. actual expenditures — national component, 2009–2018

(Thousands of United States dollars)

		Funding available for the year									
Year	*Approved budget*	*Balance brought forward*	*Contributions of the Government of Cambodia*	*International voluntary contributions*	*Interest earned and other adjustments*	*Commitment authority authorized by the General Assembly*	*Total funding available for the year*	*Commitment authority used*	*Actual full-year expenditures*	*Unspent balance*	*Commitment authority returned*
2009	6 983.6	2 497.2	–	5 419.0	–	–	7 916.3	–	5 928.2	1 988.1	–
2010	7 907.3	1 988.1	2 300.0	4 849.0	–	–	9 137.1	–	7 907.2	1 229.9	–
2011	9 857.9	1 229.9	350.0	7 233.3	–	–	8 813.2	–	9 071.8	(258.6)	–
2012	9 240.5	(258.6)	1 700.0	7 168.7	–	–	8 610.0	–	8 926.6	(316.6)	–
2013	9 370.3	(316.6)	3 600.0	4 481.6	–	–	7 765.1	–	7 523.9	241.2	–
2014	6 380.7	241.2	3 959.0	2 021.5	–	–	6 221.8	–	6 063.3	158.5	–
2015	6 653.8	158.5	4 100.0	2 316.4	–	–	6 574.9	–	6 476.0	98.9	–
2016	6 643.5	98.9	4 150.0	2 350.9	–	–	6 599.8	–	6 561.1	38.7	–
2017	6 371.8	38.7	4 150.0	1 730.3	–	–	5 919.0	–	5 829.7	89.3	–
2018[a]	5 697.8	89.3	4 000.0	1 478.9	–	–	5 568.2	–	–	–	–

[a] Represents the status as at 30 September 2018. Actual full-year expenditures and unspent balance will be available at year-end.

Table 2

Approved budget vs. actual expenditures — international component, 2009–2018

(Thousands of United States dollars)

		Funding available for the year									
Year	*Approved budget*	*Balance brought forward*	*Contributions of the Government of Cambodia*	*International voluntary contributions*	*Interest earned and other adjustments*	*Commitment authority authorized by the General Assembly*	*Total funding available for the year*	*Commitment authority used*	*Actual full-year expenditures*	*Unspent balance*	*Commitment authority returned*
2009	29 387.3	9 491.2	–	27 683.2	505.8	–	37 680.1	–	22 338.4	15 341.7	–
2010	23 360.2	15 341.7	–	16 660.0	275.8	–	32 277.5	–	22 805.0	9 472.5	–
2011	30 834.7	9 472.5	–	21 458.7	193.8	–	31 125.0	–	22 912.9	8 212.2	–
2012	25 011.7	8 212.2	–	16 576.1	30.2	–	24 818.5	–	23 340.3	1 478.2	–
2013	26 005.1	1 478.2	–	22 903.4	20.4	–	24 401.9	–	23 746.2	655.7	–
2014	23 421.9	655.7	–	16 785.3	0.0	15 540.0	32 981.0	–	21 728.1	11 252.9	15 540.0
2015[a]	27 096.6	(4 287.1)	–	17 760.1	(112.9)	12 100.0	25 460.1	10 678.4	24 038.5	1 421.6	1 421.6
2016[a]	25 697.7	–	–	13 234.2	(93.1)	12 100.0	25 241.2	10 407.7	23 548.9	1 692.3	1 692.3
2017[a,b]	23 763.0	–	–	9 229.8	244.4	11 000.0	20 474.1	10 619.0	20 093.1	381.0	381.0b
2018[a,c]	17 713.7	–	–	9 423.5	10.5	8 000.0	17 434.0	7 434.0	–	–	–

[a] Since 2015, any remaining balances at year-end are to be returned to the regular budget and cannot be carried forward to the next period, under the terms of use of the subvention from the regular budget.

[b] The unspent balance of 2017 will be returned during the current budget period.

[c] Represents the status as at 30 September 2018. Voluntary contributions and pledges include approximately $4.5 million in contributions received, $2.9 million in firm pledges and $2.0 million in soft pledges. Actual full-year expenditures, total utilization of commitment authority and unspent balance will be available at year-end.

Table 3

Total funding vs. actual expenditures — both components, 2009–2018

(Thousands of United States dollars)

	Funding available for the year											
Year	*Approved budget*	*Balance brought forward*	*Contributions of the Government of Cambodia*	*International voluntary contributions*	*Interest earned and other adjustments*	*Commitment authority authorized by the General Assembly*	*Total funding available for the year*	*Commitment authority used*	*Actual full-year expenditures*	*Unspent balance*	*Commitment authority returned*
	(1)	*(2)*[a]	*(3)*	*(4)*	*(5)*	*(6)*	*(7) = (2) + (3) + (4) + (5) + (6)*	*(8)*	*(9)*	*(10) = (7)-(9)*	*(11) = (6)-(8)*
2009	36 370.9	11 988.4	–	33 102.2	505.8	–	45 596.4	–	28 266.6	17 329.8	–
2010	31 267.5	17 329.8	2 300.0	21 509.0	275.8	–	41 414.6	–	30 712.2	10 702.4	–
2011	40 692.6	10 702.4	350.0	28 692.0	193.8	–	39 938.2	–	31 984.7	7 953.5	–
2012	34 252.2	7 953.5	1 700.0	23 744.8	30.2	–	33 428.5	–	32 266.9	1 161.6	–
2013	35 375.4	1 161.6	3 600.0	27 385.0	20.4	–	32 167.0	–	31 270.1	896.9	–
2014	29 802.6	896.9	3 959.0	18 806.8	–	15 540.0	39 202.7	–	27 791.4	11 411.4	15 540.0
2015	33 750.4	(4 128.6)	4 100.0	20 076.5	(112.9)	12 100.0	32 034.9	10 678.4	30 514.5	1 520.4	1 421.6
2016	32 341.2	98.8	4 150.0	15 585.1	(93.1)	12 100.0	31 840.9	10 407.7	30 110.0	1 730.9	1 692.3
2017	30 134.8	38.7	4 150.0	10 960.1	244.4	11 000.0	26 393.1	10 619.0	25 922.8	470.3	380.1[b]
2018[c]	23 411.5	89.3	4 000.0	10 902.4	10.5	8 000.0	23 002.2	7 434.0	–	–	–

[a] Reflects the unspent balance for the previous year less the amount of commitment authority returned for that year.

[b] The unspent balance for 2017 will be returned during the current budget period.

[c] Represents the status as at 30 September 2018. Actual full-year expenditures, total utilization of commitment authority and unspent balance for 2018 will be available at year-end.

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Agenda item 74 (c)
Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Letter dated 19 October 2018 from the Permanent Representative of Myanmar to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith a document entitled "Memorandum on Myanmar's democratic transition: challenges and way forward" (see annex).

I would be most grateful if the present letter and its annex could be circulated as a document of the General Assembly, under agenda item 74 (c).

(*Signed*) Hau Do **Suan**
Ambassador
Permanent Representative

18-17609 (E) 231018

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Annex to the letter dated 19 October 2018 from the Permanent Representative of Myanmar to the United Nations addressed to the Secretary-General

Memorandum on Myanmar's democratic transition: challenges and way forward

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1. Introduction

Myanmar's democratically elected civilian government, which took office in March 2016, is transforming the country from authoritarian to a democratic federal union. Myanmar had endured decades of armed conflict, suffering from years of underdevelopment, social and political stagnation. With this unbearable experiences and understanding the yearning of people for peace and security, for an end to unrest and strife, for material and emotional security, for a chance to contemplate the future of their children with tranquillity, the Government places national reconciliation and peace as its top priority together with aiming for prevailing rule of law, rebuilding the country's economy, opening up the nation to the world, improving social development for the entire people and paying continued attention to amendment of the Constitution.

Over 2 years in Office, the Government has been reforming public institutions and strengthening the rule of law to create a fair and just society for all people in the country. Significant progress has been made ranging from health and education sectors to tackling corruption. However, many challenges remain.

In her 43rd Singapore Lecture at the Institute of South East Asian Studies in August 2018, State Counsellor Daw Aung San SuuKyi pointed out that a transition is, put very simply, the process of going across from one point to another. The distance that must be covered and the nature of the terrain that must be travelled define the scope and complexity of the challenges that have to be faced and overcome. Myanmar is crossing over from a long established, authoritarian system to a democratic society.

The Myanmar Sustainable Development Plan was recently developed. It could also be seen as a roadmap for the nation's transition, identifies five goals under three pillars, namely Peace and Stability pillar, Prosperity and Partnership pillar and People and Planet pillar. The five goals are Peace, National Reconciliation, Security and Good Governance; Economic Stability and Strengthened Macroeconomic Management; Job Creation and Private Sector-led Growth; Human Resources and Social Development for 21st Century Society; and Natural Resources and the Environment for Prosperity of the Nation.

Human rights and inclusiveness are fundamental to the successful transformation of Myanmar into a democratic society. It is a supremely challenging task, particularly for a fledgling democracy. However, Myanmar is strong in its resolution to build the democratic society to which the people Myanmar aspire.

2. Fostering National reconciliation and Peace

Myanmar has experienced 70 years of internal armed conflicts since its independence. Naturally, Myanmar has always wanted to achieve peace and reconciliation. Bringing peace and establishing national reconciliation, none of these efforts are either easy or simple and it is a long-term process.

Myanmar is convinced that a country without peace and stability cannot achieve a prosperous, sustainable and durable peaceful federal union. In view of that the government has given priority to peace and national reconciliation.

2.1 National Ceasefire Agreement

To tackle ethnic strife and cease armed conflicts, successive Governments had attempted to achieve ceasefires with various armed groups to meet political agreements that are acceptable to different forces. The National Ceasefire Agreement (NCA) aims to consolidate existing bilateral ceasefire agreements between the

Military (Tatmadaw) and multiple ethnic armed groups. NCA was signed on 15 October 2015, and it is a merging equilibrium point where different forces come together to create a new political dialogue process for all ethnic groups. The NCA also includes an explicit commitment to 'establish a union based on the principles of democracy and federalism'.

Joining NCA by the two more ethnic armed groups made altogether 10 signatories so far to the NCA, and the Government is committed to continue its endeavours to bring all ethnic armed organizations under the NCA umbrella and to the conference table.

2.2 Union Peace Conference

To keep the momentum gained after signing of NCA, the Government has been striving with unrelenting moral force to create a stable and peaceful surrounding that is free from armed conflicts with the strong conviction that peace can be achieved only through understanding and trust.

In view of solving political problems through negotiations and narrowing the trust deficit among different institutions, ethnic groups and communities, the Union Peace Conference — the 21st Century Panglong has been held and brought all ethnic nationalities to present their positions and views openly and freely to formulate fundamental principles for a democratic federal union.

Three sessions of the Peace Conference — 21st Century (Panglong), held so far, have adopted fifty-one fundamental principles that cover the areas of political, economic, social, land and environment which will become part of the Union Peace Accord. Preparation works are underway for the Fourth Panglong Conference.

2.3 Principles for Democratic Federal Union

Establishing the federal Union and achieving the democratic standards is the ultimate goal of the Government of Myanmar. Despite the challenges, the government is undertaking to establish a Union based on democracy and federalism for the benefit of all its citizens.

The Government has spared no effort in nurturing democratic norms and practices among all its citizens. These efforts include the promotion of the rule of law, good governance and protection of human rights, and the fostering of vibrant civil society. All these are essential for the emergence of a democratic federal Union in which the security and prosperity of all citizens are assured.

On the occasion of the third anniversary of signing the NCA, a special meeting between the Union Government and leaders of 10 NCA signatory Ethnic Armed Organizations (EAO) was successfully held in Nay Pyi Taw on 15–16 October 2018. As a result, the Union Government and the EAOs agreed a number of important matters, inter alia, setting up a timetable and priority work processes required for important basic principles related to democracy and federal union in the forthcoming three sessions of the conference to be held before 2020, starting coordination and discussion of security related reintegration matters.

3. Social and Economic Development

3.1 Myanmar Sustainable Development Plan-MSDP 2018–2030

The Government of Myanmar has developed Myanmar Sustainable Development Plan-MSDP (2018–2030) that finds resonance in the global sustainable development agenda and provides a unifying and coherent roadmap for the nation's future reforms.

The MSDP recognizes three pillars-peace and stability, prosperity and partnership and people and the planet. The pillars are supported by the five goals — the first MSDP goal focuses on peace and national reconciliation, key elements for achieving political stability; the second goal emphasizes macroeconomic management, with a focus on achieving and then maintaining economic stability; the third goal relates to job creation and private sector growth; the fourth goal focuses on human capacity and social development, including expanding access to quality education and healthcare; and the fifth goal highlights on natural resources management and environmental protection.

3.2 Health care

Myanmar attaches great importance of the public health care development and there has been an increase in the health budget in the tenure of the incumbent government. The health budget for 2017–18 fiscal-year is over Kyat 1077 billion, higher than the Kyat 850 billion allocated in 2016–17 that makes up 5.16 percent of the total budget for 2017–18.

Together with the budget rise in the health sector, health care services have also been increased in terms of upgrading hospitals, building new regional hospitals, rural sub clinics, appointing public health supervisors, doctors, midwives, nurses and health workers as well as cooperation with international and regional partners in expending mobile clinic programmes to outreached areas and affected people by natural and manmade disaster. The Myanmar National Health Plan (2017–2021) has been drawn up to provide the best health care to the public. The ultimate goal of the plan is to be able to provide health care services, which is essentially basic health care for the people, at less expense in any places in 2020–2021 fiscal-year.

3.3 Education

In order to access quality and equity in the education sector, the Government of Myanmar has developed a national education strategic plan (NESP). The plan spells out the key challenges that the sector faces, and provides a roadmap for sector-wide reforms for the period 2016 to 2021.

The education budget has been gradually increased between 2016 to 2019. In the 2016-17 fiscal-year, the budget was Kyat 1,726 billion; in the 2017/18 fiscal-year, the education budget was Kyat 1,756 billion; and in the 2018/19 fiscal-year, there will be an increase to Kyat 2,175 billion in expenditure.

The NESP focuses on 9 areas; preschool and kindergarten education, basic education, basic education curriculum, student assessments and examination, teacher education and management, alternative education, Technical and vocational education and training (TVET), higher education, management, capacity development and quality assurance. The plan is expected to contribute to improved teaching and learning, vocational education and training, research and innovation leading to measurable improvements in student achievement in all schools and educational institutions.

4. Promotion and protection of human rights

Human rights and inclusiveness are fundamental to the successful transformation into a democratic society. Therefore, the Government of Myanmar is committed to establish a democratic federal Union which will guarantee the security and prosperity for all people while promoting and protecting human rights.

4.1 Press freedom

Since the beginning of the democratic transition, Myanmar has undertaken a series of socioeconomic and political reforms including the media reforms. The enactment of the Media Law and the Printing and Publishing Enterprise Law (PPEL) made improvement in media sector and abolishing past prior censorship, and allowed newspapers to become editorially independent.

The new Broadcasting Law was adopted enabling private, public and community media to flourish. The Myanmar News Media Council was established in October 2015, to act as a media self-regulatory body.

Anti-hate Speech Law and Right to Information Law were drafted. They are now before the parliament and open for public scrutiny.

These significant improvements in the media sector contributed to the democratic transition serving as a platform for democratic discourse, increasing transparency and strengthening good governance of the Government. At the same time, it is also imperative that every individual respects the existing laws of the land, does not infringe others' privacy and does not defame others while exposing news.

4.2 Women's rights

Since becoming a state party to the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1997, Myanmar has strived to achieve gender equality and helped women fully enjoy their rights. Myanmar adopted the National Strategic Plan for the Advancement of Women (2013–2022), aligning it with the 12 areas of the Beijing Platform for Action, for the advancement of women, and promotion and protection of their rights.

In order to protect women from all forms of violence, including domestic abuse, marital rape, sexual violence, harassment by stalking, harassment in work place and public place and violence through tradition and customary practices, the Government submitted a draft law relating to violence against women to the parliament for deliberation and adoption.

There are significant progress made in the role of women in politics, civil service, business, education and health care in the past years but much remains to be done.

4.3 Forced labour

The Government pays attention to elimination of forced labour. The Government signed the Memorandum of Understanding to a new Action Plan for the Elimination of all Forms of Forced Labour and the Agreement for the Extension to the Supplementary Understanding with the International Labour Organization (ILO) in January 2018. The Action Plan provides operating a complaint mechanism and undertaking training and awareness raising activities on forced labour.

With the progress made in the elimination of forced labour, Memorandum of Understanding on Decent Work Country Program (2018–2021) was signed between Myanmar and ILO on 21 September 2018 to promote and advance decent work in Myanmar. The development of Myanmar's first DWCP represents a major step for ILO's engagement in Myanmar in support of the tripartite partners.

In order to eliminate child labour, the Ministry concerned is drafting a National Action Plan on the Elimination of Child Labour.

4.4 Disability rights

Myanmar acceded to the Convention on the Rights of Persons with Disabilities (CRPD) in 2011. A milestone was achieved in June 2015 when the Law on Protection and Promotion of the Rights of Disabilities was enacted which ensured the empowerment of the persons with disabilities in Myanmar to be able to take part in all spheres of social, economic, political and professional life.

Subsequently in 2016, the Government adopted the National Strategy for the Development of Persons with Disabilities. The Myanmar National Social Protection Strategic Plan, developed in 2014, provides social protection and socioeconomic needs of the citizens especially children, women, elderly and persons with disabilities.

In addition, the Government has been working in partnership with a number of regional and international organizations to protect and promote the rights of the disabled with a view to contributing towards the full implementation of the 2030 Agenda.

In 2017, the Early Childhood Intervention Strategy was launched in collaboration with UNICEF and the Leprosy Mission Myanmar to help safeguard the welfare of disabled children.

4.5 Child rights

Myanmar became a state party to the UN Convention on the Rights of the Child in 1991 and ratified the Optional Protocol, the Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst forms of Child Labour (no 182/1999) in 2013.

Accordingly, Myanmar enacted the National Child Law in 1993. Currently the Parliament is in the final stage of adopting a revised Child Law drafted to be in conformity with prevailing international norms. The revised Law is stipulated to be the most comprehensive child law in Myanmar with extensive provisions on the rights of children and prevention from all forms of violence.

4.6 Human rights in drugs control

Myanmar adopted a new drug policy in February 2018 with the support of the UNODC Regional Office. In addition to law enforcement and criminal justice efforts, the policy includes health and social policy responses, outlining a path to promoting sustainable alternative development for opium farmers, and international cooperation.

The new policy adopted a harm reduction approach to users which decriminalizes the drug users. It entails increasing compliance with human rights as a cross-cutting issue.

Myanmar is also a signatory to the Global Call to Action on the World Drug Problem which was adopted in September this year. The Government will be hosting a regional conference in November this year with the support of UNODC, focusing on prevention of the precursors flow and regional collaboration.

5. International treaties and cooperation with the United Nations

Cooperation with the United Nations is a cornerstone of Myanmar's foreign policy. In this spirit, Myanmar has consistently cooperated with the United Nations in various fields, including in the area of human rights. Myanmar provides necessary information and responds to communications sought by the United Nations bodies. It also submits reports to the relevant United Nations treaty bodies.

In expressing Myanmar's strong commitment to the promotion and protection of human rights and respecting fundamental rights of individuals, Myanmar has become state party to some core international human rights treaties such as Convention on the Rights of the Child (CRC), the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), Convention on the Rights of the Persons with Disabilities (CRPD), the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography (OPSC), the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC), International Covenant on Economic, Social and Cultural Rights (ICESCR).

5.1 Visit of the Special Representative of the Secretary-General (SRSG) for Children and Armed Conflict

The Special Representative of the Secretary-General (SRSG) for Children and Armed Conflict, Ms. Virginia Gamba visited Myanmar from 27–29 May 2018 and held fruitful discussions with high-level officials.

Myanmar has made significant progress in its efforts to ending and preventing violations and abuses against children. Myanmar signed a Joint Action Plan with United Nations in June 2012 to prevent recruitment and use of Children in the Tatmadaw (Military), and since then 924 children and young people have been released. The Optional Protocol to the Convention on the Rights of Child on the involvement of children in armed conflict was signed in 2015 and the Paris Principles for the reintegration of children who have been associated with armed groups or forces, into civilian life was signed in 2017.

5.2 Special Representative of the Secretary-General for Sexual Violence in Conflict

Ms. Pramila Patten, Special Representative of the Secretary-General for Sexual Violence in Conflict visited Myanmar from 14 to 17 December 2017. After her visit, SRSG office has made a proposal to sign a Joint Communique between the UN and the Government of the Republic of the Union of Myanmar in order to prevent and respond to conflict-related sexual violence. Myanmar and the Office of SRSG for Sexual Violence in Conflict are coordinating to sign the Joint Communiqué in the near future.

5.3 Special Envoy of the Secretary-General on Myanmar

As cooperation with the UN is cornerstone of Myanmar's Foreign Policy, Myanmar accepted the visits of Secretary-General's Special Envoy Ms. Christine SchranerBurgener though Myanmar rejected the resolution which mandated the Secretary-General to appoint his special envoy. Myanmar extended full cooperation for the visit of the Special Envoy for three times on 12–21 June, 11–13 July, and 11–21 October 2018 respectively. During her visits, Myanmar has arranged series of meetings with the relevant authorities and stakeholders from various communities and visits to the Rakhine and Shan states to see and understand the situation on ground. The Government of Myanmar has already informed the Special Envoy its agreement for her proposal to open the office in Nay Pyi Taw since her first visit to Myanmar.

6. The Situation in Rakhine State

The Rakhine issue is one of the colonial legacies. It began when people from Chittagong were brought to Myanmar to do agriculture and plantation works operated by colonialists. Over the years, their number multiplied due to various reasons —

expansion of families, weak border enforcement and corruption that lead to illegal migration, human smuggling and trafficking.

Over the century, the ethnic Rakhine people and the Muslims have never integrated nor assimilated though they used to live in harmony. Conflicts did break out from time to time in the past but never to a scale of communal violence until in recent times where the confluence of many factors made it into one of the most politicized and publicized issues in democratic Myanmar. The division between the two communities is so deeply wedged that there seems to be a race to get an advantage against each other by turning the situation into more than what it should have been. For example, the situation sometimes has been characterized as religious conflicts between Buddhists and Muslims and at other times as human rights issue highlighting only the plight of so called "Rohingya" being trafficked, persecuted, forced to flee, or as an issue of racial identity. In reality, both groups are very much in the same situation.

The Rakhine people feel that they have no voice to stop what is happening in their region. They are indigenous to the area but now being overtaken by foreign illegal immigrants who are growing drastically in number. They have now becomes a minority in their hometown. They are being pressured to accept the situation. There is a fear that they risk being further marginalized. To them, the international community seemed to be discriminately paying more attention and giving more sympathies to the illegal migrants.

The government is being criticized as not doing enough and is partial to one or another. There are fears and mistrusts between the two groups incited by many internal and external factors while there was also a sense of urgency to take advantage of the current international and domestic political narratives and opportunities to push forward their cause.

Against this background, the complex challenges presented to the NLD Government call for sensitivities to understand and recognize the plights of both communities, to work towards building trust and allaying their fears, and to be mindful and careful at each and every step not to be seen as bias or indifference. At the same time paying attention to concerns and furor from domestic and international communities as well as to all other political elements who do not wish to see the Government succeeds. The Government is cognizant that it has a burden to prove its sincerity and commitment to finding a sustainable resolution to the issue; and that peace and stability will not last in the Rakhine region unless the resolution is obtained transparently, legitimately and justly for both communities.

6.1 First coordinated attack of ARSA in 2016

On 9 October 2016, a religious extremist terrorist group called AqaMul Mujahidin (later became Arakan Rohingya Salvation Army-ARSA) launched its first attack on three Border Police posts in northern Rakhine State. The attack was premeditated and well organized, causing death of 13 security personnel and other civilians. Their goal was clearly to incite violence and attract international attention of the issue at the time when the whole world was welcoming Myanmar's peaceful democratic transition. The terrorist attack took place in slightly over a month after the formation of Advisory Commission on Rakhine State headed by late Dr. Kofi Annan, former UN Secretary-General. The Commission was set up with an aim to finding a sustainable solution to the issue of Rakhine State.

6.2 Second coordinated attack of ARSA followed by Exodus

Just a few hours after Mr. Kofi Annan handed over the Advisory Commission's final report to the Government, ARSA launched premeditated, well planned and

coordinated simultaneous armed attacks in the early hour of 25 August 2017 on 30 Border Guard posts and one army Battalion headquarters in northern Rakhine. The attacks caused death of dozens of security personnel as well as many innocent civilians. ARSA claimed responsibility for the coordinated attacks.

Due to the planned and coordinated attacks on security forces and brutal killings of innocent people, the anti-terrorism Central Committee of the Government of Myanmar declared ARSA as a terrorist group, in accordance with Counter-Terrorism Law. The United Nations Counter Terrorism Committee has also been informed.

The highest Islamic organization in Myanmar, the "All Myanmar Islamic Religious Organization" as well as the "Interfaith Dialogue Group of Myanmar" issued statements condemning the acts of terror committed by ARSA and expressed their solidarity with the government. They stressed that no religion can condone violence that result in the loss of life and property. They expressed their support for the government's efforts to address the situation in Rakhine and its endeavours to promote national reconciliation and peace in the entire country.

ARSA has also brutally killed several non-Muslims ethnic minorities in northern Rakhine since October 2016, including massacre of a hundred Hindus.

The Hindu people, Rakhine and other smaller ethnic minorities such as Mro, Daingnet, Khami had to flee their homes towards the south such as Sittwe in fear of their lives while Muslim community to the north, towards the border with Bangladesh. In terms of percentage, these smaller ethnic minorities make up a significant number. Sadly, their plights have been overlooked by the many observers.

The exodus of Muslim refugees has several reasons. Prominent among them is the fear factor. As the fighting against ARSA terrorist groups broke out, many fled for fear factor. Most of the women and children were forced to flee and the men were forced to join ARSA in fighting against security forces and intimidating all villagers to flee from the affected area to attract international attention.

Terrorists were spreading seeds of terror among the populations by brutal and savage murders of those considered to be collaborating with the government. ARSA group and its members were threatening the Muslim villagers not to remain in villages to flee to Bangladesh side. Those who chose to stay peacefully were intimidated by violence including explosion of bombs in their villages.

All communities living in the area are affected by the acts of terror and suffered from psychological trauma.

6.3 Strategy of ARSA

The ARSA's attacks triggered predictable and logical response of Myanmar security forces to protect the life and property of every citizen, resulting in the subsequent mass displacement of people.

They also had anticipated exodus of people from northern Rakhine to Bangladesh. These events were no doubt well planned and executed with the support of foreign terrorist organizations and accomplices at international level.

Their objective was to undermine Myanmar Government's commitment and efforts to find lasting solution through the speedy implementation of the Advisory Commission's recommendations and to elicit maximum international pressure on Myanmar to achieve their political goals.

The intention of ARSA terrorists is ultimately to carve out a separate territory for themselves. To achieve this aim, they carried out the attacks with a clear strategy which was publicly declared: Firstly, killing security and government personnel;

Secondly, killing people who are believed to be collaborating with the government; Thirdly, killing ethnic people such as Rakhine, Mro, Daingnet and people from other religion; Fourthly, launching brutal attacks and threatening the remaining inhabitants to flee these areas through intimidation and fear.

6.4 Concerns for linkage with Foreign Terrorist Fighters — FTF

Foreign Terrorist Fighters — FTFs are capable to infuse existing domestic terrorist networks or create a new terrorist organization in a third country by relocating their members to radicalize the targeted community and recruit new followers.

The current crisis in Rakhine State of Myanmar was ignited by the unprovoked armed attacks of Arakan Rohingya Salvation Army (ARSA) Terrorist group aka Al Yaqin on 30 Border Guard Police posts in August 2017. According to the international intelligence sources, the group has been guided and supported by foreign terrorist groups such as Al-Qaeda, ISIL, and Tehrik-e-Taliban Pakistan (TTP) who have called for Jihad against Myanmar government. ARSA's leader Atta Ulla himself was born, raised and trained as a terrorist in foreign countries, and commanding terrorist acts from outside of Myanmar.

It is vital to formulate concerted multilateral response against transnational and multifaceted evolving threats of FTFs. The current global security situation demands the need for countries to establish operational partnership in finding practical solutions to deal with the threats of FTFs.

Myanmar is seriously concerned that the support of regional and international terrorist organizations would make ARSA part of regional terrorism-networks. Any support, including moral support to terrorists, wittingly or unwittingly, must be avoided.

Myanmar stresses the importance of monitoring ARSA's activities in the region and their possible links with FTFs.

7. International pressure and domestic concerns

Although the international community seems to accept that the Rakhine issue is a complex and deep rooted problem, the various bodies and mechanisms within the United Nations are being misused to put pressure on Myanmar under the pretext of defending human rights.

The Government of Myanmar rejected the Independent International Fact-Finding Mission (FFM) on Myanmar since its establishment by the Human Rights Council in March 2017. Since then, the Government has also made clear that it would not accept the results of its findings, as its establishment raised genuine concerns for lack of impartiality and will be a hindrance to the Government's efforts to find sustainable solution to the issue in Rakhine State. The report of the FFM has only served to strengthen the Government's concerns. Not only is this report detrimental to social cohesion in Rakhine State, it also undermines the Government's efforts to bring peace, national reconciliation and development to the entire nation. The FFM under tremendous pressure, reported the information they wanted to believe and jump to a dangerous conclusion that could derail the democratization process and disintegration of the national unity.

In addition to the annual resolution on the human rights situation in Myanmar adopted in the every March session, the Human Rights Council in its 39th session adopted with a vote a resolution titled "Situation of human rights of Rohingya Muslim and other minorities in Myanmar" is yet another reflection of the FFM report. The

resolution was based on serious, but unverified accusations and recommendation of the FFM that could even endanger the national unity of the country. Non-constructive measures and retributive actions will only lead to further polarization of the divided communities and institutions Myanmar wish to reconcile and worsen the already complicated situation and undermine the government's ongoing efforts to bring peace, national reconciliation and development in the entire nation.

The resolution contains intrusive languages and demands that will not contribute to finding lasting solution to the delicate and complex situation of Rakhine state. Some elements in the resolution make direct challenge to the sovereignty of a nation. A United Nations forum such as Human Rights Council should not be a platform for such an intrusive approach and it will be setting a bad precedence for other member states. Myanmar categorically rejected the resolution.

In addition, its references to the establishment of the independence mechanism to collect consolidate preserve and analyse evidence of the crimes and violations of international law committed in Myanmar since 2011 does not include in the Council's mandate. Even a cosponsor country of the resolution made a reservation on some paragraphs of the resolution including acting beyond mandate of the Human Rights Council.

The 72nd UNGA adopted with a vote a resolution entitled situation of human rights in Myanmar and it mandated the Secretary-General to appoint a special envoy on Myanmar.

Myanmar consistently opposes any politically motivated county specific resolution in the Third Committee of the General Assembly. Myanmar always upholds the principles of non-politicization, non-selectivity, objectivity, impartiality, respect for national sovereignty and non-interference in the internal affairs of other states in considering human rights situations.

The General Assembly resolution 60/251 of 15 March 2006 established the Human Rights Council and universal periodic review mechanism with the objective to build constructive engagement based on mutual respect and cooperation in promotion and protection of human rights. Myanmar believes that the universal periodic review process is the most appropriate mechanism for addressing human rights situations.

Myanmar believes that the resolutions on Myanmar as selective, unfair and discriminatory treatment of a member state in the United Nations system.

In addition to the discussion in the Human Rights Council and the Third Committee of the UN General Assembly, some member states of the United Nations Security Council occasionally request the issue of Myanmar to be discussed in the Council.

Pressuring Myanmar in different UN fora does not help Myanmar's efforts for solving the issue, but rather lead to further polarization and escalation of tensions among different religious communities in the country and beyond.

It has always been the cornerstone of its foreign policy to cooperate with the United Nations. Myanmar accepted the visit of the members of the UN Security Council in April 2018. Similarly, Myanmar has been cooperating with the Special Envoy of the Secretary-General.

Myanmar is not a party to the Rome Statute and the Court has no jurisdiction on Myanmar whatsoever. Regardless, the ICC's Prosecutor has made a Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute ("the Request") to the ICC and has requested Myanmar to submit its opinion.

Myanmar has declined to engage with the ICC by way of a formal reply due to the reasons stated in the Press Release of the Office of the State Counsellor of Myanmar dated 9 August 2018.

The actions of the Prosecutor constitute an attempt to circumvent the spirit of article 34 of the Vienna Convention. By allowing such a contrived procedure, the ICC may set a dangerous precedent whereby future populistic causes and complaints against non-State Parties to the Rome Statute may be litigated at the urging of biased stakeholders and non-governmental organizations and even then, selectively based on the political current of the times.

8. Government's practical efforts to address the issue of Rakhine State

The issue of Rakhine State is extremely complex. Years of living separate communal lives, based on religious and social identities and increasing competition over limited economic resources have led to diminishing trust and harmony between communities in Rakhine State. The incidents in 2012 deteriorated and the terrorist attacks by ARSA in 2016 and 2017 further worsen the situation.

Recognizing the urgent need to find a lasting peace, harmony, and development for all communities in Rakhine, the Government places the issue of Rakhine State as top priority and puts all-out efforts to address it effectively and swiftly. The followings are national mechanisms to address the issue.

8.1 The Central Committee on the Implementation of Peace, Stability and Development of the Rakhine State

The Central Committee on the Implementation of Peace, Stability and Development of the Rakhine State, led by the State Counsellor, was established on 30 May 2016. The Central Committee laid down the necessary guidelines to synchronize the work of different government agencies in improving the lives of both communities in Rakhine State.

8.2 Advisory Commission on Rakhine State

In addition, Myanmar set up Advisory Commission on the Rakhine State chaired by the late former UN Secretary-General Dr. Kofi Annan on 5 September 2016 in order to accommodate the international perspective in seeking sustainable solutions to the complex issue for the peace, stability and development of all communities residing in Rakhine. The Advisory Commission released its final report, which includes 88 recommendations on 24 August 2017. The Government of Myanmar has been immediately implementing 57 recommendations which are in accordance with the situation on the ground. The Government is now expanding its implementation to 81 recommendations.

8.3 Investigation Commission on Maungtaw, Rakhine State

National-level Investigation Commission, headed by Vice President U MyintSwe, consisted of 13 eminent persons from various fields, was formed on 1 December 2016. The Commission was mandated to look into, inter alia, the incidents of violent attacks in Maungtaw, their background situations, root causes and allegations of human rights abuses. The Commission submitted its report directly to the President with 49 recommendations to the government, including formation of high-level committee to implement its suggested actions.

8.4 Committee for the Implementation of the Recommendations on Rakhine State

The Committee for Implementation of the Recommendations on Rakhine State was formed on 12 September 2017 with 15 members led by Dr. Win Myat Aye, Union Minister for Social Welfare, Relief and Resettlement to implement the recommendations of the Advisory Commission on Rakhine State and Investigation Commission on Maungtaw. As the Committee is responsible for informing the progress to the public quarterly, the reports were released and reported in the state-owned newspapers in February, June and October 2018 respectively for public observation.

8.5 Union Enterprise for Humanitarian Assistance, Resettlement and Development in Rakhine (UEHRD)

The Union Enterprise for Humanitarian Assistance, Resettlement and Development in Rakhine (UEHRD) was launched on 17 October 2017 to enhance humanitarian assistance, resettlement and development of the State aiming to mobilize the participation of the people, volunteers, private sectors and the interested donor countries, UN agencies and local and regional NGOs.

The State Counsellor leads the UEHRD and the Union Minister for Social Welfare, Relief and Resettlement is Vice-Chairman. The UEHRD is working closely with the private sector as well as the civil society. It also collaborates with the Government organizations at the union and regional levels. International partners, donor agencies, United Nations Organizations are invited to participate in its process. Myanmar is ready and willing to receive verified returnees, and is also working towards beyond repatriation. Therefore, the 10 task forces are working together in this regard.

8.6 Advisory Board for the Committee for Implementation of the Recommendations on Rakhine State

In order to provide external perspectives and advices to the Committee for the Implementation of the Recommendations, the Advisory Board for the Committee for Implementation of the Recommendations on Rakhine State was formed on 14 December 2017, with eminent personalities from home and abroad aiming to scope both local and international dimensions on the issue. It was headed by Dr. SurakiatSathirathai, former Deputy Prime Minister and Foreign Minister of Thailand.

The Board provided 5 recommendations at its interim report and 7 recommendations in its final report. The Advisory Board completed its works after submitting the final report. The Board's recommendations include matters related to promoting inter-communal dialogue, the pilot project for a model township and assistance to the health sector in Rakhine State. Therefore, some members of the Advisory Board, in their personal capacities, remain engaged with these issues. The Board also recommended setting up a nationally initiated independent commission of enquiry.

8.7 Independent Commission of Enquiry

Upon the recommendation of the Advisory Board, the Government has established a 4-member Commission on 30 July 2018, led by Ambassador Rosario Manalo, former undersecretary of the Ministry of Foreign Affairs of the Philippines and Former Chair and Current Representative of the Philippines to CEDAW. Another member of the Commission is Ambassador Kenzo Oshima, former Under-Secretary-

General for Humanitarian Affairs of UN and former Permanent Representative of Japan to UN.

The Commission is tasked to investigate allegations of human rights violations and related issues following the terrorist attacks with a view to seeking accountability and reconciliation, and to formulate recommendations on steps to be taken to ensure peace and stability in Rakhine State. The Commission will submit its report to the President of Myanmar within a year, including its recommendations prepared on the basis of the outcomes of its investigation.

Since its establishment, ICoE has visited Myanmar 3 times and held meetings with relevant authorities as well as other stakeholders. They also visited Rakhine State met with various communities.

9. Repatriation

The Government of Myanmar shares deep sympathy and concern for all displaced persons especially women and children and pays high priority to the repatriation.

9.1 Bilateral approach

With regard to the repatriation of the displaced persons from Rakhine State, Myanmar is cooperating closely with Bangladesh and (3) documents have been signed between the two countries. In line with these bilateral arrangements, Myanmar has been making arrangements, with full momentum, for the repatriation of verified displaced persons. The process of repatriation was scheduled to have commenced on 23 January 2018. Since then, Myanmar has been ready to receive verified returnees.

9.2 Bilateral agreements between Myanmar and Bangladesh

Repatriation is put as one of the priorities among many recommendations on Rakhine State. The Governments of Myanmar and Bangladesh signed "Arrangement on Return of Displaced Persons from Rakhine State" on 23 November 2017, the Terms of Reference (ToR) for the Joint Working Group on the repatriation of displaced Myanmar residents from Bangladesh on 19 December 2017 and "The Physical Arrangement for Repatriation of Displaced Myanmar Residents from Bangladesh" on 16 January 2018 respectively.

As agreed in the Physical Arrangement, Myanmar has prepared to receive verified returnees at two reception centres, Taung PyoLetwe for land route returnees and Nga Khu Ya for sea route returnees, and will locate them at Hla Phoe Kaung transit camp before sending them back to their respective places.

9.3 Progress on providing lists of verified returnees

Myanmar side provided the Bangladesh side with the detailed list of 508 persons of Hindu faith, and 750 persons of Muslim faith who had been verified as residents in Myanmar and suggested the latter to include them in the first batch of repatriation at the First Joint Working Group Meeting held in Nay Pyi Taw in January 2018. On 19 March 2018, Myanmar has sent the revised list of verified persons of 444 Hindu faiths and 778 Islamic faiths to Bangladesh side through diplomatic channels.

On 17 February 2018, during the visit of the Union Minister for Home Affairs of Myanmar to Bangladesh, the Bangladesh side presented the forms of the list of 8,032 people from 1,673 households for verification. However, the forms provided were not the prescribed forms mutually agreed by both sides.

Therefore, the Ministry of Foreign Affairs informed and made a number of notifications to the Bangladesh side to comply with the agreement reached between the two countries and use the mutually agreed Verification Forms annexed to the Physical Arrangement.

Despite above-mentioned technical issues, the Department of Immigration has been making utmost efforts in verifying the people in the list, and as of 3 October 2018, Myanmar has provided Bangladesh with a list of a total of 6,472 verified persons out of 8,032. Among 6,472 verified persons, 4,654 were verified as the residents in Rakhine, 54 as terrorists and 1,764 as the persons not included in the registered List of Family Household in Myanmar.

The Second Joint Working Group meeting was held in Dhaka on 17 May 2018. During the meeting, the Bangladesh side proposed that they would send filled-up agreed verification forms with relevant data and information along with photographs of prospective returnees, but without signature and fingerprint.

The third Joint Working Group meeting is scheduled to hold in Dhaka on 28 October 2018.

Myanmar welcomes the recent announcement of the Foreign Minister of Bangladesh at the press briefing that the first batch of 6,000 Rohingya refugees would be sent back to Myanmar soon. Myanmar reiterates its readiness to receive the verified returnees soonest.

9.4 Exchange of visits between Myanmar and Bangladesh

A number of exchange visits have been conducted between the two countries, in order to enhance mutual understanding and bilateral cooperation. Such visits include the visit of Union Minister for International Cooperation U Kyaw Tin to Bangladesh on 10–13 January 2017, the visit of National Security Advisor U Thaung Tun to Bangladesh on 2–4 July 2017, the visit of Union Minister for the Office of the State Counsellor U Kyaw Tint Swe to Bangladesh on 1–3 Oct 2017, the visit of Union Minister for Home Affairs Lt. General Kyaw Swe to Bangladesh on 15–17 February 2018, the visit of Union Minister for Social Welfare, Relief and Resettlement Dr. Win Myat Aye to Bangladesh on 11–13 April 2018, and the visits of Minister for Home Affairs of Bangladesh to Myanmar on 23–25 October 2017.

At the invitation of the Myanmar side, Bangladeshi Foreign Minister Mr. Abul Hassan Mahmood Ali visited Myanmar on 22–23 November 2017 and also on 9–11 August 2018. He also visited Rakhine State to see preparations for reception of displaced persons.

The discussions resulted to reach (8) point-agreement to resolve the Rakhine issue amicably. Repatriation will be in a voluntary, safe and dignified manner. In this light, a hotline has been established between the Ministers to facilitate ease of discussions.

9.5 Matters related to Myanmar-Bangladesh border area

Myanmar-Bangladesh border forces held their meetings occasionally and discussed matters related to incidents along the border area, illegal border crossings, coordinated patrols along the border, information transfers, opening of a border liaison office (BLO). The BLO office will soon be opened in Taknaf, Cox's Bazar district. The two sides will share information on security and the rule of law and will coordinate security measures.

Coordinated patrols along the land border of Myanmar and Bangladesh has been conducted 74 times, and coordinated patrols along the Naf River have been conducted 14 times from May to August 2018.

9.6 MoU between Myanmar, UNDP and UNHCR

The Government has invited UNDP and UNHCR to assist the government's efforts in repatriation process. Consequently, the Ministry of Labour, Immigration and Population of Myanmar and, UNDP and UNHCR signed the MoU on 6 June 2018.

The Technical Working Group (TWG) of the MoU has so far held coordinating meetings for five times and conducted first phase of field visit to 23 villages in northern Rakhine State on 21–23 July.

The UN team has been conducting second phase of assessment in 26 villages from 5 October to 5 November 2018.

9.7 Cooperation with ICRC

Humanitarian assistance is being provided to all affected communities in Rakhine State through Red Cross Movement. Myanmar also requested ICRC to provide humanitarian assistance to those residing in the boundary line area only from Myanmar side. In this regard, ICRC conducted preliminary assessment on 12-9-2018 in cooperation with the Myanmar Red Cross Society under the Red Cross Movement.

9.8 Cooperation with ASEAN

Myanmar as a member of ASEAN, is working closely with other members of ASEAN. Myanmar is receiving humanitarian assistance from the Coordinating Centre for Humanitarian Assistance on Disaster Management (AHA) and planning to expand its cooperation with ASEAN in resettlement and livelihood of the returnees. The Informal ASEAN Foreign Ministers' Meeting (IAMM) in New York held on during the current 73rd Session of the United Nations General Assembly discussed the Rakhine State issues and agreed to work together to find a solution.

9.9 Trilateral Informal Meeting

At the invitation of State Councilor and Foreign Minister of the People's Republic of China, Mr Wang Yi, Union Minister for Office of the State Counsellor U Kyaw Tint Swe paid a working visit to Beijing on 28 June, 2018. During the visit, a trilateral informal meeting was held between the Union Minister, Foreign Minister Mr. Abul Hassan Mahmood Ali and the State Councellor and Foreign Minister Mr. Wang Yi. The trilateral informal meeting reached consensus on a three-phased solution: "cessation of violence, repatriation and development".

During the high-level week of the current United Nations General Assembly in New York, China organized an informal trilateral meeting. The UN Secretary-General António Guterres and Special Envoy were also present at the meeting by invitation. The meeting was held in a friendly, cordial and constructive atmosphere, with a three-point consensus reached. First, Myanmar and Bangladesh agreed to properly solve the Rakhine issue through friendly consultations. Second, the Bangladeshi side said it is prepared to repatriate the first group of displaced persons fled from Myanmar's Rakhine State to Bangladesh, while the Myanmar side said it is prepared to receive them. Third, Myanmar and Bangladesh agreed to hold a joint working group meeting as soon as possible so as to work out a roadmap and timetable for the repatriation and achieve the first repatriation as early as possible.

10. Conclusion

In Rakhine State, hundreds of new jobs and opportunities have been created for local people through public-private partnerships in recent years. An assessment has been made on the viability of a new Special Economic Zone that would bring new jobs and businesses to the region. In terms of new infrastructure, electrification has been expanded and new roads and bridges have been built, including a new highway connecting remote areas only accessible by boat previously.

Alongside the Rakhine Advisory Commission's recommendations, the work of the Independent Commission of Enquiry will become an important guiding light for the resolution of long out reached problems in Rakhine State. The challenges facing Myanmar are complex and multifaceted. The greatest strength of a democratic transition is the involvement of the people. To weld together the will and purpose of millions into a whole that allows the wonderful diversity of our country to shine through is a formidable undertaking.

Every country has an obligation to play two roles as member of the international community. One as a member of the international community and the other as sovereign independent nation to serve the interest of its people. Every country has to try to strike a balance between these two roles. The Government of Myanmar believes that the human rights can only be upheld by rule of law and by national reconciliation, particularly in Myanmar where there are over 130 different ethnic groups living together as a nation.

The Government of Myanmar will continue to stride with the unity and strength of its people for peace, national reconciliation, rule of law and social-economic development of the people despite all the formidable challenges it is facing. We are resolute to fulfil the ultimate aspiration of the people to build a democratic federal union where justice, freedom and equal opportunity for all its citizens are guaranteed. The international community can best assist Myanmar in realizing its democratic nation building by rendering constructive contribution towards Myanmar's endeavours based on mutual understanding and mutual respect.

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Security Council
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Protracted conflicts in the GUAM area and their implications for international peace, security and development

The situation in the occupied territories of Azerbaijan

Letter dated 19 October 2018 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General

Upon instructions from my Government, I have the honour to transmit herewith the records of violations of the ceasefire by the Republic of Armenia in September 2018 (see annex).*

During the reporting period, the armed forces of Armenia violated the cease fire regime 2,722 times and continued to use large-calibre guns and heavy weaponry from their positions in the occupied territories of the Republic of Azerbaijan and from the territory of the Republic of Armenia.

As a result, one serviceman of the armed forces of the Republic of Azerbaijan was killed and two were wounded during the month.

The military occupation of the territory of Azerbaijan does not represent a solution and will never produce a political outcome desired by Armenia. The resolution of the conflict is possible only on the basis of the sovereignty and territorial integrity of Azerbaijan within its internationally recognized borders.

I should be grateful if you would have the present letter and its annex circulated as a document of the General Assembly, under agenda items 35 and 41, and of the Security Council.

(*Signed*) Yashar **Aliyev**
Ambassador
Permanent Representative

* The annex is being circulated in the language of submission only.

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Annex to the letter dated 19 October 2018 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General

Violations of the ceasefire by the armed forces of the Republic of Armenia for September 2018*

Dates	*Direction (locality)*	*Weapons used*	*Number of ceasefire violations*	*Casualties and damages*
1–30 September	**Aghdam district, Azerbaijan**			
	Afatly village	AK	9	
	Ahmadali village	AK	13	
	Ahmadaghali village	AK/AKM	44	
	Ayag Garvand village	AK	15	
	Bash Garvand village	AK/AKM	26	
	Chamanly village	AK/AKM	34	
	Chiragly village	AK/AKM	28	
	Evoghlu village	AK/AKM	5	
	Garadaghli village	AK	13	
	Mahrizli village	AK/AKM	16	1 serviceman of the armed forces of Azerbaijan was killed
	Mammadbaghirly village	AK/AKM	10	
	Mirashilly village	AK	3	
	Opposite positions	AK/AKM	75	
	Orta Garvand	AK/AKM/OSV	23	
	Saryjaly village	AK/AKM	38	
	Shahvalilar village	AKM	7	
	Yuzbashily village	AK	2	
	Zangishaly village	AK/AKM	16	
	Aghjabadi district, Azerbaijan			
	Gyamaddynly village	AK/AKM	68	
	Minakhorlu village	AK/AKM	49	
	Dashkasan district, Azerbaijan			
	Tazakand village	DShK	2	
	Zivilyan village	AKM	4	
	Fizuli district, Azerbaijan			
	Alkhanli village	AK	37	
	Ashaghi Abdurrahmanli village	AK/AKM	89	
	Horadiz village	AK	48	
	Opposite positions	AK/AKM	342	
	Shukurbayli village	AK/AKM	53	

* Settlements of the Republic of Azerbaijan included in this information are under occupation by the Republic of Armenia or situated close to the fire point areas.

Dates	*Direction (locality)*	*Weapons used*	*Number of ceasefire violations*	*Casualties and damages*
	Gazakh district, Azerbaijan			
	Ashaghi Askipara village	AK/AKM/DShK	12	
	Aslanbayli village	AKM/DShK	12	
	Bala Jafarli village	AK/AKM	40	
	Dash Salahli village	AKM	1	
	Farahli village	AK/AKM/DShK	12	
	Jafarli village	AKM	8	
	Gaymagly village	AK/AKM/DShK	25	
	Gushchu Ayrim village	AK/AKM/DShK	46	
	Gyzylhajili village	AK/AKM	36	
	Kamarli village	AK/AKM/DShK	11	
	Kohna Gyshlag village	AK/AKM	3	
	Mazam village	AK/AKM	8	
	Musakoy village	AKM	5	
	Shikhli village	AKM	2	
	Gedebey district, Azerbaijan			
	Ayridara village	AKM/DShK	2	
	Daryurd village	DShK	1	
	Galakand village	AKM/DShK	19	
	Garavallar village	AKM/DShK	12	
	Goyali village	AK/AKM	5	
	Mutudara village	AK/AKM/DShK	43	
	Novoivanovka village	AK/AKM	4	
	Unnamed heights	AKM/NSV	10	
	Zamanly village	AK/AKM/DShK	21	
	Goranboy district, Azerbaijan			
	Balligaya village	AKM	2	
	Bash Gishlag village	AKM/DShK	12	
	Garachinar village	AKM	2	
	Gargujag village	AK/AKM	19	
	Gulustan village	AK/AKM/DShK	43	
	Kharkhaput village	AK/AKM/DShK	22	
	Opposite positions	AK/AKM/DShK/ 60 mm M	74	
	Tapgaragoyunlu village	AK/AKM	95	
	Unnamed heights	AK/AKM	2	
	Unnamed positions	AK/AKM	9	
	Yenikand village	AK/AKM/DShK	24	
	Yukhari Agjakand village	AK/AKM	14	
	Zeyva village	AK/AKM	23	
	Goygol district, Azerbaijan			
	Kurdalylar village	AK/AKM/DShK	34	
	Pirverdilar village	AKM	1	

Dates	*Direction (locality)*	*Weapons used*	*Number of ceasefire violations*	*Casualties and damages*
	Jabrayil district, Azerbaijan			
	Ahmadalilar village	AK	17	
	Jojug Marjanli village	AK/AKM	53	
	Lala Ilahi heights	AK/AKM	74	
	Opposite positions	AK/AKM/DShK	20	
	Khojavand district, Azerbaijan			
	Opposite positions	AK/AKM/OSV	152	1 serviceman of the armed forces of Azerbaijan was wounded
	Unnamed heights	AK	15	
	Tartar district, Azerbaijan			
	Borsunlu village	AK/AKM	34	
	Chayly village	AK/AKM	72	
	Gapanli village	AK/AKM	76	
	Gaynag village	AK/AKM	9	
	Gazyan village	AK/AKM	68	
	Girmizikand village	AK	4	
	Hasangaya village	AK/AKM	56	
	Husanli village	AK/AKM	8	
	Jamilly village	AK	3	
	Karmiravan village	AK/AKM	35	
	Opposite positions	AK/AKM	38	
	Shikharg village	AKM	2	
	Tazakand village	AK/AKM	64	
	Tovuz district, Azerbaijan			
	Aghdam village	AK/AKM/DShK	15	
	Aghbulag village	AK/AKM/DShK	17	
	Asryk Jirdakhan village	AK/AKM/DShK	20	1 serviceman of the armed forces of Azerbaijan was wounded
	Garalar village	AKM/DShK	27	
	Hajali village	AKM	2	
	Kokhanaby village	AK/AKM/DShK	39	
	Munjuglu village	AK/AKM/DShK	19	

Abbreviations: AK, Kalashnikov assault rifle; AKM, modernized Kalashnikov assault rifle; DShK, heavy machine gun; OSV, semi-automatic sniper rifle; 60-mm M, mortar.

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Advancement of women

Security Council
Seventy-third year

Letter dated 23 October 2018 from the Permanent Representatives of Germany, Namibia and Spain to the United Nations addressed to the Secretary-General

Germany, together with Spain and Namibia, has the honour to transmit a Chair's summary of the high-level meeting of the Women and Peace and Security Focal Points Network, which was held in New York on 26 September 2018, during the seventy-third session of the General Assembly (see annex).*

More than 160 participants attended the ministerial-level event, which brought together foreign ministers, heads of regional organizations, United Nations officials, focal points of the Network and civil society representatives to discuss the theme of the event, "The Security Council and women and peace and security: fostering practical action".

The summary contains the numerous and practical recommendations for the implementation of the women and peace and security agenda that were made during the meeting.

We would be grateful if the present letter and its annex could be circulated as a document of the General Assembly, under agenda item 29, and of the Security Council.

(*Signed*) Christoph **Heusgen**
Ambassador
Permanent Representative of Germany to the United Nations

(*Signed*) Neville Melvin **Gertze**
Ambassador
Permanent Representative of Namibia to the United Nations

(*Signed*) Agustin **Santos**
Ambassador
Permanent Representative of Spain to the United Nations

* The annex is being circulated in the language of submission only.

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Annex to the letter dated 23 October 2018 from the Permanent Representatives of Germany, Namibia and Spain to the United Nations addressed to the Secretary-General

Women, Peace and Security Focal Points Network
Side event: 73rd session of the United Nations General Assembly

The Security Council and Women, Peace and Security: Fostering Practical Action
Chair's Summary

During the 73rd session of the United Nations General Assembly (UNGA), the Women, Peace and Security Focal Points Network held its annual UNGA side event. The event was hosted by the Permanent Missions of Germany, Spain and Namibia to the United Nations (UN), in partnership with UN Women, on September 26, 2018 at 3pm to 5pm at the German Mission in New York. More than 160 participants attended the ministerial-level event, which brought together foreign ministers, heads of regional organizations, UN officials, focal points of the Network and civil society representatives, to discuss the theme of the event, *The Security Council and Women, Peace and Security: Fostering Practical Action*. Ten of the more than 80 members of the WPS Focal Points Network are current members of the UN Security Council, and 10 are slated to be Council members in 2019.

Welcome and introductory remarks were delivered by Heiko Maas, Federal Minister for Foreign Affairs of Germany who highlighted that women's participation is not just a matter of gender equality, but also a prerequisite for peace. In opening remarks, Netumbo Nandi-Ndaitwah, Deputy Prime Minister and Minister of International Relations and Cooperation of Namibia noted that while the women, peace and security (WPS) agenda has gained momentum since the adoption of UN Security Council resolution 1325 (2000) and seven subsequent women, peace and security resolutions, momentum for implementation of the agenda needs to be sustained. Josep Borrell, Minister of Foreign Affairs, European Union and Cooperation of Spain urged a greater responsibility for WPS commitments.

In an open discussion format moderated by Karin Landgren, Executive Director of Security Council Report, attendees intervened on a number of key national and global priorities for the women, peace and security agenda, using the questions below as a guide:

- How can Focal Points strengthen follow-up on the implementation of the Security Council's normative framework on WPS?
- Which actions will Focal Points take to ensure a systematic approach to the WPS agenda at national level?

UN Women Executive Director, Phumzile Mlambo-Ngcuka, noted the need for the international community to act when international commitments are being ignored by conflict parties. Tanya Gilly-Khailany, a former Iraqi parliamentarian and co-founder of SEED Foundation in Iraqi Kurdistan, drove home the point that women's rights and status is linked to the stability, security and prosperity of nations, and that the rights of women in conflict countries are an essential part of the solution.

Interventions were made by the Canadian Minister of Foreign Affairs, the Minister for Foreign Affairs of Finland, the Minister of Foreign Affairs of Liechtenstein, the Secretary-General for the Organization for Security and Cooperation in Europe, the Secretary-General for the Union of the Mediterranean, the African Union Special Envoy for Women, Peace and Security, as well as senior

government officials from the European Union, Afghanistan, Austria, Bangladesh, Belgium, Brazil, Ireland, Italy, Japan, Mexico, Netherlands, United States, Slovenia, Sri Lanka, Thailand and Uruguay, and the NGO Working Group on Women, Peace and Security.

Drawing attention to the upcoming 20th anniversary of the adoption of UNSCR 1325 (2000) in 2020 and the 2030 Agenda for Sustainable Development, speakers noted the urgency for more tangible impact of the women, peace and security agenda. They discussed progress made, emerging challenges and recommendations, including creating more awareness, taking into account the experiences of migrant and refugee women, and engaging young women in peacebuilding. Acknowledging the current *#MeToo* movement against gender-based violence, speakers also highlighted the importance of utilizing existing mechanisms within the UN Security Council for investigating and prosecuting acts of sexual and gender-based violence, increasing the number of female peacekeepers and increasing briefings by women to the Security Council on pressing matters.

Key recommendations to emerge from the discussion were as follows:

Accountability and Monitoring

- Encourage efforts by international tribunals to **take up investigations and bring charges related to sexual violence in conflict**.
- The UN Security Council should impose **sanctions more frequently on those responsible for gross human rights violations in conflicts**, to serve as a deterrent to human trafficking and sexual and gender-based violence. Specific designation criteria on sexual and gender-based violence can be a useful tool in that regard.
- Increase the number, quality and implementation of **national action plans** on women, peace and security, and continue the sharing of good practices among Member States.
- Strengthen the **data collection mechanism on women, peace and security** at the national level.
- Continue to foster increased **regional cooperation in the implementation of women, peace and security commitments** on gender budgeting, national action plans, mediation and crisis management.
- Support **strong funding for WPS and gender equality**, recognizing that gender equality is often first on the chopping block, and last on the priority list.
- The women, peace and security agenda should be **more integrated with the 2030 Agenda for Sustainable Development**, particularly with Goal 5 on gender equality and Goal 16 on peaceful and inclusive societies.
- Members of the Network who are members of the **UN Security Council** should work closely to ensure implementation of Network recommendations.

Prevention and Protection

- Ensure **more regular reactions of the UN Security Council** in any instance of conflict-related sexual violence and make **better use of the different instruments to help end impunity** for sexual violence.
- Explore effective ways of **integrating disarmament into the women, peace and security agenda**, particularly to address the issue of small arms and light weapons.

- Support **women human rights defenders** who take a lot of risk to implement the women, peace and security agenda, through targeted support and capacity building mechanisms.
- Strengthen **protection for refugee and migrant women** and provide inbuilt support systems for victims and survivors of sexual and gender-based violence.
- Support **consistent gender conflict expertise and analysis** that amplifies diverse local women's experiences, and addresses differentiated needs, power relations, and risks of women, girls, men boys, and LGBTQI people.
- **Sexual violence against men and boys** remains underreported and there is need to find comprehensive and sustainable solutions.

Participation

- Ensure continuity of the practice of having an **increased number of female briefers** address the UN Security Council.
- Support women mediator networks and increase the number of **women in mediation and preventive diplomacy**.
- Support **practical initiatives to increase the number of women in peacekeeping operations**. The Elsie Initiative, for example, provides training, research, technical and financial assistance to troop and police contributing countries.
- **Increase investment in the economic needs of women** and their rehabilitation and reintegration in the aftermath of crisis.
- Increase the **inclusion of young women** in the debate and integrate the youth, peace and security agenda.

Commitments and Announcements

A number of Network members made announcements on future actions that they will be taking in their efforts to fulfil the commitments of the women, peace and security agenda.

- Germany, current Chair of the WPS Focal Points Network, reaffirmed its commitment to the WPS agenda as **a priority issue during Germany's term on the Security Council (2019–2020)** and as **co-chair of the Security Council Informal Experts Group on WPS** in 2019.
- Namibia, Chair of the WPS Focal Points Network in 2019, will **host the 2019 annual capital meeting of the Network in Windhoek, Namibia on April 10–11**. The priority theme will be "*Women, Peace and Security: Towards full participation*" and the sub-theme, "*Mainstreaming the WPS agenda in the programmes of Regional Economic Communities*."
- Canada and Uruguay will jointly **co-chair the WPS Focal Points Network in 2020**.
- Canada plans to appoint a Women, Peace and Security ambassador.
- Spain and Finland will launch a **"Commitment 2025" initiative** to ensure women's full participation in peace processes by 2025.
- The Union for the Mediterranean is developing a regional programme with the United Kingdom on "Enhancing the civic and social engagement of women and youth in preventing violence and extremism."

About the WPS Focal Points Network

Launched in 2016 by the Government of Spain and currently chaired by Germany, the WPS Focal Points Network is a cross-regional forum for Member States and regional organizations, which collaborates with UN agencies and civil society to share experiences and best practices in advancing the implementation of Security Council resolutions on women, peace, and security. UN Women serves as the secretariat of the Network, which is currently composed of over 80 members.

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Protracted conflicts in the GUAM area and their implications for international peace, security and development

The situation in the occupied territories of Azerbaijan

Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba

Security Council
Seventy-third year

Letter dated 19 October 2018 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General

In its written communication for the report of the Secretary-General entitled "Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba" (A/73/85), the Republic of Armenia once again made a false statement, the only purpose of which was to mislead the international community and deny its responsibility for apparent non-compliance with the Charter of the United Nations and international law.

In this connection, I would like to refer to documents A/71/627–S/2016/986 and A/71/831–S/2017/199, which contain our comprehensive response to Armenia's falsifications, and should be grateful if you would have the present letter circulated as a document of the General Assembly, under agenda items 35, 41 and 43, and of the Security Council.

(*Signed*) Yashar **Aliyev**
Ambassador
Permanent Representative

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Security Council
Seventy-third year

The situation in the Middle East

Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories

Identical letters dated 19 October 2018 from the Permanent Representative of the Syrian Arab Republic addressed to the Secretary-General and the President of the Security Council

Upon instructions from my Government and further to all our previous letters regarding the occupied Syrian Arab Golan, I should like to convey to you the following information:

This morning, acting in response to the decision of the occupying Israeli Government to conduct so-called local elections in the occupied Syrian Golan at the end of this month and as an expression of their categorical rejection of those elections and all attempts by Israel to impose its laws and administration in the occupied Syrian Golan, our people in the occupied Syrian Golan gathered in public squares and burned the voter cards that the occupying Israeli authorities had distributed in the towns of the occupied Syrian Golan. Moreover, they underscored their deep-rooted sense of belonging to their mother country, Syria, and that their position is in line with their long-standing rejection of the Israeli occupation, a position that they have held from the time the occupation began in June 1967. Our people in the occupied Golan have also rejected the annexation decision that the occupying Power took in December 1981. They consider that decision and all other measures taken by Israel, the occupying Power, to be null and void and without legal effect under Security Council resolutions, in particular resolution 497 (1981), as well as General Assembly and Human Rights Council resolutions, and all international norms and laws. Our people in the occupied Golan consider that the Syrian Golan has been and will continue to be Syrian and that it will be returned to the Syrian homeland, sooner or later. They will continue to resist the Israeli occupation and thwart all Israeli schemes and efforts to obliterate their Syrian Arab identity, which was passed on to them by their parents and grandparents.

The Government the Syrian Arab Republic reaffirms that the occupied Syrian Arab Golan is an integral part of the Syrian Arab Republic and that its citizens and territory will be returned to the mother country, Syria. The Government also reaffirms

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that the occupying authorities do not have the right to impose their laws on the Syrian Arab residents of the Golan or to change the demographic composition and legal status of that integral part of Syrian territory. The Syrian Government calls upon the Security Council and the General Assembly to compel Israel to implement their resolutions in which they reaffirm that Israel must withdraw immediately from the occupied Syrian Golan to the line of 4 June 1967 and immediately cease its futile attempts to impose its laws and administration on the Syrian Arab citizens living under its abhorrent occupation, including the attempt to organize the farcical so-called local elections.

I should be grateful if the present letter could be circulated as a document of the General Assembly, under agenda items 38 and 55, and of the Security Council.

(*Signed*) Bashar **Ja'afari**
Ambassador
Permanent Representative

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The role of the United Nations in promoting a new global human order

Prevention of armed conflict

The situation in the Middle East

Promotion and protection of human rights

Security Council
Seventy-third year

Identical letters dated 22 October 2018 from the Permanent Representative of the Syrian Arab Republic addressed to the Secretary-General and the President of the Security Council

Upon instructions from my Government and further to our previous official letters, the most recent of which was dated 14 October 2018 (S/2018/916), concerning the crimes that are being committed by the illegitimate "international coalition" led by the United States, I should like to draw your attention to the following:

On the evening of 19 October 2018, the illegitimate international coalition led by the United States of America committed a heinous crime against dozens of Syrian civilians. Coalition aircraft deliberately targeted homes in the villages of Susah and Albu Badran in the south-eastern countryside of Dayr al-Zawr governorate, killing 62 civilians, mostly women and children, and injuring an unknown number of others, some of whom are in critical condition.

In its previous letters, the most recent of which was dated 14 October 2018 (S/2018/916), the Syrian Arab Republic noted that this criminal alliance has stepped up its savage attacks against innocent civilians and has been systematically using weapons of mass destruction and weapons that have indiscriminate effects, such as internationally prohibited white phosphorus bombs, to bombard residential neighbourhoods in Raqqah, Dayr al-Zawr, Aleppo and Hasakah governorates. Moreover, in those same letters, the Syrian Arab Republic has called upon the Security Council to take immediate action to halt those crimes and prevent their recurrence.

The crime that was committed yesterday in the villages of Susah and Albu Badran is a war crime and a crime against humanity, and demonstrates, once again, the extent to which the States of that coalition disregard international law and international humanitarian law. It also strips those States of any moral standing that

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they might be able call upon in order to lecture others about the need to protect civilian lives and respect human rights instruments and the peremptory norms of humanitarian law when conducting military operations, which the United States claims are directed against terrorists. That alliance kills innocent civilians only; it is not battling, as it claims, Islamic State in Iraq and the Levant and other terrorists.

This heinous crime confirms yet again to the entire world that the goal the United States wishes to achieve from the illicit operations conducted by this alliance is not to combat terrorism, but rather to kill as many Syrian people possible. Day after day, events confirm that the United States supports by all available means the alliance's continued operation and presence in Syria, in clear disregard of all humanitarian values that humanity has pledged to protect. This crime is but another in the series of war crimes and crimes against humanity that this shameful coalition has been committing against Syrian civilians in order to further an agenda that is blatantly aimed at undermining the future and the unity and territorial integrity the Syrian Arab Republic and impeding efforts to solve the crisis in Syria.

The Syrian Arab Republic once again calls upon the Security Council to fulfil its responsibility to prevent such attacks. In addition to conducting an independent and transparent international investigation into those crimes, the Council must condemn them and take immediate action to stop them and punish the aggressors. Moreover, the Security Council must put an end to the hostile and illegal presence in Syrian territory of United States forces and other foreign forces and ensure that the States of the alliance comply with the Charter of the United Nations, in which crimes of aggression, interference in the internal affairs of States and undermining the territorial integrity of Member States are emphatically rejected.

I should be grateful if the present letter could be circulated as a document of the General Assembly, under agenda items 16, 34, 38, and 74, and of the Security Council.

(*Signed*) Bashar **Ja'afari**
Ambassador
Permanent Representative